

26.11.2

Received From
SEATTLE

NOV 28 1994

FILED RECEIVED LODGED

JAN 19 1995

CLERK U.S. DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT TACOMA
BY DEPUTY

Effective
date

NOV 22 94

CLERK
WESTERN DISTRICT OF WASHINGTON
BY *at Seattle*

ENTERED
ON DOCKET
JAN 20 1995
By Deputy *JM*

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,
ON BEHALF OF THE UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY

Plaintiff,

v.

THE PORT OF TACOMA

Defendant.

THE PUYALLUP TRIBE OF INDIANS

Intervenor.

C94-56483
~~C94-1783~~

CIVIL ACTION NO.

PUYALLUP LAND TRANSFER
CONSENT DECREE

42559
AR 2.2

USEPA SF



1039808

ORIGINAL

90-11-2-737

DEPARTMENT OF JUSTICE

JAN 26 1995

LANDS DIVISION
WASHINGTON

TABLE OF CONTENTS

I.	BACKGROUND	3
II.	JURISDICTION	9
III.	PARTIES BOUND	10
IV.	DEFINITIONS	11
V.	GENERAL PROVISIONS	17
VI.	PERFORMANCE OF THE WORK	20
VII.	QUALITY ASSURANCE, SAMPLING, AND DATA ANALYSIS . .	31
VIII.	ACCESS	31
IX.	REPORTING RELEASES	33
X.	PROJECT COORDINATORS	34
XI.	EMERGENCY RESPONSE	35
XII.	REIMBURSEMENT OF RESPONSE COSTS	36
XIII.	INDEMNIFICATION	39
XIV.	DISPUTE RESOLUTION	41
XV.	COVENANTS BY THE PORT AND THE TRIBE	46
XVI.	EFFECT OF SETTLEMENT; CONTRIBUTION PROTECTION . .	47
XVII.	NO ACTION ASSURANCES	49
XVIII.	ACCESS TO INFORMATION; RETENTION OF RECORDS . .	52
XIX.	NOTICES AND SUBMISSIONS	54
XX.	EFFECTIVE DATE	55
XXI.	RETENTION OF JURISDICTION	55
XXII.	APPENDICES	56
XXIII.	MODIFICATION	56
XXIV.	LODGING AND OPPORTUNITY FOR PUBLIC COMMENT . . .	57
XXV.	SIGNATORIES/SERVICE	57

1 I. BACKGROUND

2
3 A. The United States of America ("United States"), on behalf of
4 the Administrator of the United States Environmental Protection
5 Agency ("EPA"), has filed a complaint in this matter pursuant to
6 Sections 106 and 107 of the Comprehensive Environmental Response,
7 Compensation, and Liability Act ("CERCLA"), 42 U.S.C. §§ 9606 and
8 9607. This action is also brought in reference to the August 27,
9 1988 Puyallup Land Settlement Agreement (the "Settlement
10 Agreement"), which was incorporated into federal law by the
11 Puyallup Tribe of Indians Settlement Act of 1989, 25 U.S.C. § 1773
12 ("the Settlement Act").

13 B. The United States in its complaint seeks, inter alia:
14 (1) reimbursement by the Port of Tacoma of Past and Future Response
15 Costs incurred by EPA and the Department of Justice for response
16 actions related to implementation of the Settlement Agreement,
17 involving six properties (the "Settlement Properties") which are
18 located within the boundaries of the Commencement Bay
19 Nearshore/Tideflats Superfund Site ("the CB/NT Site") in Tacoma,
20 Pierce County, Washington, together with accrued interest; and (2)
21 performance of response actions, including notification
22 requirements, by the Port of Tacoma ("the Port"), if necessary,
23 consistent with the Settlement Act, the Settlement Agreement, the
24 Record of Decision for the CB/NT Site, the National Contingency
25 Plan ("NCP"), 40 C.F.R. Part 300, as amended, and this Consent
26 Decree and its Appendices.

1 C. On August 27, 1988, the Puyallup Land Settlement Agreement
2 was signed by, among others, the United States, the Puyallup Tribe
3 of Indians ("the Tribe"), the Port, and the State of Washington.
4 The Settlement Agreement provides that the Port will transfer to
5 the United States, in trust for the Tribe, six (6) parcels of
6 property, which are defined in this Consent Decree as the
7 "Settlement Properties". The Settlement Properties subject to this
8 Consent Decree are the Inner Hylebos Property, Upper Hylebos
9 Property, Taylor Way Property, East-West Road Property, Blair
10 Waterway Property, and Blair Backup Property. The Settlement
11 Agreement provides further that prior to transfer of the Settlement
12 Properties, the Port will perform cleanup actions, as necessary, in
13 order to assure that such properties comply with applicable
14 federal, tribal, and state contamination law and can be used for
15 commercial and industrial purposes.

16 D. In the Puyallup Tribe of Indians Settlement Act of 1989,
17 25 U.S.C. § 1773, the United States formally adopted the terms of
18 the Settlement Agreement and its Technical Appendices into law.
19 The Settlement Act provides that the transfer of the Settlement
20 Properties is to be carried out in accordance with the Settlement
21 Agreement. Under the Settlement Act, the Tribe is not to be liable
22 for the cleanup costs or in any other manner, for contamination on
23 Settlement Properties except any contamination caused by the
24 Tribe's activities after conveyance of the Settlement Properties to
25 the United States, to be held in Trust for the Tribe. 25 U.S.C.
26 § 1773b(b)(2).

1 E. To implement the Settlement Act's provisions regarding
2 compliance with applicable federal and state law, EPA, the
3 Washington State Department of Ecology ("Ecology"), the Tribe, and
4 the Port entered into a Memorandum of Agreement ("MOA") effective
5 March 21, 1990. The MOA provides, in part, that implementation of
6 the cleanup activities under the Settlement Agreement will occur
7 under EPA and Ecology oversight, and that EPA will oversee
8 implementation of approved cleanup plans under CERCLA enforcement
9 authorities.

10 F. Each of the environmental investigations conducted at each
11 of the Settlement Properties, followed the steps outlined in the
12 MOA, as follows:

13 1. Results of an environmental audit are summarized in a
14 Phase I Environmental Investigation Report.

15 2. Based on the results of the Phase I report, a Phase II
16 Environmental Investigation Sampling and Analysis Plan ("Work
17 Plan") was prepared by the Port to guide the environmental
18 investigation and evaluation at each Settlement Property. The Work
19 Plan was reviewed and approved by EPA, Ecology, and the Tribe.

20 3. In accordance with the Work Plan for each Settlement
21 Property, preliminary site investigations and sampling were
22 conducted from December 1989 through March 1990. Data were
23 evaluated and results were summarized in a Preliminary
24 Investigation Report. The Report was reviewed by EPA, Ecology, and
25 the Tribe, and modified in response to their comments.

26 4. As determined necessary, the Port prepared additional
27 Sampling and Analysis Plans to complete environmental
28 investigations. The additional exploration and sampling were
accomplished through July 1991. Investigation results were
presented in a Draft Final Investigation Report, which was reviewed
by EPA, Ecology, and the Tribe, and modified in response to their
comments.

29 5. A Final Investigation Report presented all
30 investigation data gathered at each Settlement Property; an
31 evaluation of site conditions accomplished by comparing soil,
32 sediment, and water quality data to federal and state environmental
33 criteria and regulations; a summary of any cleanup actions

1 completed at each Settlement Property; and recommendations for any
2 necessary cleanup actions at each Settlement Property. EPA issued
3 an administrative order, EPA Docket No. 1091-02-14-106, to govern a
4 short-term removal action at the Inner Hylebos Property to meet the
5 cleanup requirements. The Final Investigation Report for each
6 Settlement Property was reviewed and approved by EPA, Ecology, and
7 the Tribe. Based on results presented in the Final Investigation
8 Reports, EPA and Ecology determined that cleanup actions would be
9 necessary for two of the Settlement Properties (Blair Waterway
10 Property and Blair Backup Property).

11
12 6. An Analysis of Alternatives Report was prepared by the
13 Port for two of the Settlement Properties (Blair Backup Property,
14 Blair Waterway Property). The Analysis of Alternatives Report
15 presented an evaluation of alternative cleanup actions and an
16 analysis of applicable or relevant and appropriate requirements
17 (ARARs), and it identified a preferred cleanup alternative. The
18 Analysis of Alternatives Report was subject to a 30-day public
19 comment period. The Analysis of Alternatives Report was reviewed
20 and approved by EPA, Ecology, and the Tribe.

21
22 7. Cleanup Plans were prepared by the Port for two of the
23 Settlement Properties (Blair Backup Property, Blair Waterway
24 Property). The Cleanup Plans incorporated the preferred cleanup
25 alternative, as modified for community and tribal acceptance, and
26 included requirements to conduct and to operate and maintain the
27 cleanup measures, and to monitor the effectiveness of those cleanup
28 actions. The Cleanup Plans were approved by EPA, Ecology, and the
Tribe, and were implemented by the Port under an EPA Administrative
Order on Consent, EPA Docket No. 1093-03-05-106.

1 G. Attached to this Consent Decree are Appendices A through F,
which describe the documents prepared for the investigations, the
results of the investigations and cleanups, and all Institutional
Controls that have been established for each of the six (6)
Settlement Properties.

2 H. The Port and the Tribe have executed an Implementing
Agreement for the purpose of contractually setting forth the manner
and conditions for the conveyance of the Settlement Properties to
the Tribe. The Implementing Agreement includes a separate Addendum
for each Settlement Property, which describes specific
environmental conditions, institutional controls, use restrictions,

1 and other agreements between the Port and the Tribe relating to
2 each Settlement Property. The Implementing Agreement is attached
3 as Appendix G to this Consent Decree.

4 I. Pursuant to the MOA, EPA has issued two Administrative
5 Orders on Consent (the "Orders") to the Port to facilitate
6 implementation of the Settlement Agreement and the Implementing
7 Agreement. On July 7, 1992, EPA issued to the Port the
8 "Administrative Order on Consent for Certain of the Properties to
9 be Transferred under the Puyallup Tribe of Indians Settlement Act
10 of 1989," U.S. EPA Docket No. 1092-06-01-104/106, which among other
11 things: (1) addressed the Port's continuing responsibilities; (2)
12 defined institutional controls specific to each of four of the
13 Settlement Properties (the Inner Hylebos Property, the Upper
14 Hylebos Property, the East-West Road Property, and the Taylor Way
15 Property); and (3) provided for reimbursement of EPA's oversight
16 costs. On March 9, 1993, EPA issued to the Port the
17 "Administrative Order on Consent for a Removal Action at the Blair
18 Waterway Property and the Blair Backup Property," U.S. EPA Docket
19 No. 1093-03-05-106, which among other things: (1) established the
20 Port's cleanup requirements; (2) addressed the Port's continuing
21 responsibilities; (3) defined the institutional controls at the
22 Blair Waterway Property and the Blair Backup Property; and (4)
23 provided for reimbursement of EPA's future oversight costs. The
24 Orders provide that the duties of the Port under the Orders shall
25 be satisfied upon the entry of this Consent Decree, which covers
26 the matters addressed in, and supersedes, those Orders.

1 J. Pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, EPA
2 placed the CB/NT Site on the National Priorities List, set forth at
3 40 C.F.R. Part 300, Appendix B, by publication in the Federal
4 Register on September 8, 1983, 48 Fed. Reg. 40,658. The CB/NT Site
5 is located in Tacoma, Washington, at the southern end of the main
6 basin of Puget Sound. The CB/NT Site includes, along with other
7 land and marine features, 10-12 square miles of shallow water,
8 shoreline, and adjacent land in the industrial tideflats area of an
9 active commercial seaport. The Settlement Properties are located
10 within the boundaries of the CB/NT Site.

11 K. The decision by EPA on the remedial action to be implemented
12 at the CB/NT Site is embodied in a final Record of Decision
13 ("ROD"), executed on September 30, 1989, on which the State and the
14 Puyallup Tribe have given their concurrence. The ROD includes
15 EPA's explanation for any significant differences between the final
16 plan and the proposed plan as well as a responsiveness summary to
17 the public comments. Notice of the final plan was published in
18 accordance with Section 117(b) of CERCLA, 42 U.S.C. § 9617(b).

19 L. The ROD addresses eight Problem Areas of contaminated
20 sediments and sources of hazardous substances contamination. Of
21 the Settlement Properties addressed by this Consent Decree, the
22 Inner Hylebos Property and the Upper Hylebos Property include
23 marine sediments associated with Problem Areas that are being
24 remediated in accordance with the ROD. This Consent Decree
25 provides, in part, for the Port to remain responsible for
26 undertaking any Remedial Action involving Historic Contamination of
27 marine sediments that are located on the Inner Hylebos Property and
28

1 the Upper Hylebos Property specified by EPA as necessary to
2 implement the CB/NT ROD, which will be conducted under a separate
3 action.

4 M. The Parties recognize, and the Court by entering this
5 Consent Decree finds, that this Consent Decree has been negotiated
6 by the Parties in good faith and implementation of this Consent
7 Decree will promote implementation of the Settlement Agreement and
8 the Settlement Act, will maintain protection of human health,
9 welfare and the environment from Historic Contamination at the
10 Settlement Properties, and will avoid prolonged and complicated
11 litigation between the Parties, and that this Consent Decree is
12 fair, reasonable, and in the public interest.

13 NOW, THEREFORE, it is hereby Ordered, Adjudged, and Decreed:

14 II. JURISDICTION

15 1. This Court has jurisdiction over the subject matter of this
16 action pursuant to 28 U.S.C. §§ 1331 and 1345, and 42 U.S.C.
17 §§ 9606, 9607, and 9613(b). This Court also has personal
18 jurisdiction over the Port of Tacoma. Upon the Court granting its
19 Complaint in Intervention, this Court also will have personal
20 jurisdiction over the Puyallup Tribe of Indians with regard to
21 issues arising from the Settlement Agreement, pursuant to 25 U.S.C.
22 §. 1773. Solely for the purposes of this Consent Decree, the
23 underlying Complaint, and the Complaint in Intervention by the
24 Puyallup Tribe, the Port of Tacoma waives all objections and
25 defenses that it may have to jurisdiction of the Court or to venue
26 in this District. The United States and the Port of Tacoma shall
27 not challenge the terms of this Consent Decree, the standing of the
28

1 Puyallup Tribe to intervene, or this Court's jurisdiction to grant
2 the Tribe's intervention and to enter and enforce this Consent
3 Decree.

4 III. PARTIES BOUND

5 2. This Consent Decree applies to and is binding upon the
6 United States, the Puyallup Tribe of Indians, and the Port of
7 Tacoma. This Consent Decree also applies to and is binding upon
8 the employees, agents, successors, assigns, officers, directors,
9 and principals of the Puyallup Tribe and the Port of Tacoma. Any
10 change in ownership or corporate status of the Port of Tacoma
11 including, but not limited to, any transfer of assets or real or
12 personal property shall in no way alter the Port of Tacoma's
13 responsibilities under this Consent Decree. The obligations of the
14 Port of Tacoma or the Puyallup Tribe with respect to the
15 Institutional Controls described in Section VI and the Appendices
16 of this Consent Decree, and to access under Paragraph 18, shall run
17 with the land and shall be binding upon any Successors-in-Title, as
18 provided below in Paragraph 18.

19 3. The Port shall provide a copy of this Consent Decree to
20 each contractor hired to perform activities required under or
21 pursuant to this Consent Decree, and shall condition all contracts
22 entered into hereunder upon performance of any activity in
23 conformity with the terms of this Consent Decree. The Port or
24 the Tribe shall require their contractors to provide written notice
25 of the Consent Decree to all subcontractors hired to perform any
26 portion of the activities in areas restricted by Institutional
27 Controls that limit either subsurface intrusive activities or
28

1 activities in the Capped or Covered Areas of the Blair Backup
2 Property. The Port and the Tribe shall nonetheless be responsible
3 for ensuring that their contractors and subcontractors perform the
4 activities contemplated herein in accordance with this Consent
5 Decree. With regard to activities undertaken pursuant to this
6 Consent Decree, the Port shall be deemed to be in a contractual
7 relationship with each contractor and subcontractor for the purpose
8 of Section 107(b)(3) of CERCLA, 42 U.S.C. § 9607(b)(3).

9 IV. DEFINITIONS

10 4. Unless otherwise expressly provided herein, terms used in
11 this Consent Decree which are defined in CERCLA or in regulations
12 promulgated under CERCLA shall have the meaning assigned to them in
13 CERCLA or in such regulations. Whenever terms listed below are
14 used in this Consent Decree or in the appendices attached hereto
15 and incorporated hereunder, the following definitions shall apply:

16 "Commencement Bay Nearshore/Tideflats Superfund Site" ("CB/NT
17 Site") means the entire Commencement Bay Nearshore/Tideflats
18 Superfund Site, which is located in Tacoma, Washington and is
19 described in the Record of Decision, issued September 30, 1989.

20 "Capped or Covered Areas of the Blair Backup Property" shall
21 mean an area approximately 17 acres in size located on the Blair
22 Backup Property that is covered with either an asphalt cap or a
23 sand and gravel cover. The surveyed boundaries of the Capped or
24 Covered Areas of the Blair Backup Property are shown in Figure F-2
25 of Appendix F to this Consent Decree.

1 "CERCLA" shall mean the Comprehensive Environmental Response,
2 Compensation, and Liability Act of 1980, as amended, 42 U.S.C.
3 §§ 9601 et seq.

4 "Clean Water Act" shall mean the Federal Water Pollution Control
5 Act, as amended, 33 U.S.C. §§ 1251 et seq.

6 "Consent Decree" shall mean this Decree and all appendices
7 attached hereto and incorporated into this Consent Decree:

8 "Appendix A" is the Inner Hylebos Property Summary; "Appendix B" is
9 the Upper Hylebos Property Summary; "Appendix C" is the Taylor Way
10 Property Summary; "Appendix D" is the East-West Road Property
11 Summary; "Appendix E" is the Blair Waterway Property Summary;
12 "Appendix F" is the Blair Backup Property Summary; "Appendix G" is
13 the Implementing Agreement; "Appendix H" is the Memorandum of
14 Agreement; "Appendix I" is the CB/NT Record of Decision; and
15 "Appendix J" is the Settlement Agreement. In the event of conflict
16 between this Decree and any appendix, this Decree shall control.

17 "Day" shall mean a calendar day unless expressly stated to be a
18 working day. "Working day" shall mean a day other than a Saturday,
19 Sunday, or Federal holiday. In computing any period of time under
20 this Consent Decree, where the last day would fall on a Saturday,
21 Sunday, or Federal holiday, the period shall run until the close of
22 business of the next working day.

23 "EPA" shall mean the United States Environmental Protection
24 Agency and any successor departments or agencies of the United
25 States.

26 "Future Response Costs" shall mean all costs, including, but not
27 limited to, direct and indirect costs, that the United States
28

1 incurs in reviewing or developing plans, reports and other items
2 pursuant to this Consent Decree, or otherwise implementing,
3 overseeing, or enforcing this Consent Decree, including, but not
4 limited to, payroll costs, contractor costs, travel costs,
5 laboratory costs, the costs incurred pursuant to Sections VI, VII,
6 VIII (including, but not limited to, attorneys fees and the amount
7 of just compensation), and Section XI. Future Response Costs shall
8 also include all costs, including direct and indirect costs, paid
9 by the United States in connection with the Settlement Properties
10 between September 1, 1993 and the effective date of this Consent
11 Decree.

12 "Hazardous Substance" shall have the meaning as defined in
13 Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

14 "Historic Contamination" means any contamination that remains
15 on, in, under or about any of the Settlement Properties as of the
16 date that title to such property was or is conveyed to the United
17 States in trust for the Tribe.

18 "Implementing Agreement" means that written agreement and all
19 addenda and exhibits incorporated therein by the Port and the Tribe
20 to implement the transfer of Settlement Properties, included as
21 Appendix G to this Consent Decree, and any revisions to that
22 written agreement and all addenda that may be agreed upon by the
23 Port and the Tribe. The Implementing Agreement was approved by the
24 Tribal Council of the Puyallup Indian Tribe on February 27, 1992,
25 and subsequently approved by the Commissioners of the Port of
26 Tacoma on March 5, 1992.

1 "Institutional Controls" means land use restrictions and other
2 regulations, ordinances, covenants, and controls developed pursuant
3 to the Settlement Agreement, the MOA, the Implementing Agreement,
4 or this Consent Decree, as set forth in Appendices A through F to
5 this Consent Decree for each of the Settlement Properties, and as
6 may be modified in the future pursuant to this Consent Decree, to
7 restrict certain defined uses of the Settlement Properties as
8 necessary to maintain the integrity of cleanup measures undertaken
9 on the Settlement Properties, to prevent the unauthorized
10 disturbance of any cleanup actions, measures, or structures
11 implemented at the Settlement Properties, and to govern the
12 performance of any future activities at the Settlement Properties.

13 "Memorandum of Agreement" or "MOA" means a Memorandum of
14 Agreement effective March 21, 1990, among the Puyallup Tribe, the
15 Port of Tacoma, the Washington Department of Ecology, and EPA,
16 which established a process for investigating the Settlement
17 Properties and implementing cleanup plans, and is included as
18 Appendix H to this Consent Decree.

19 "National Contingency Plan" or "NCP" shall mean the National Oil
20 and Hazardous Substances Pollution Contingency Plan promulgated
21 pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, codified at 40
22 C.F.R. Part 300, including, but not limited to, any amendments
23 thereto.

24 "Paragraph" shall mean a portion of this Consent Decree
25 identified by an arabic numeral or an upper case letter.

26 "Parties" shall mean the United States, the Puyallup Tribe, and
27 the Port of Tacoma.

1 "Party in Privity with the Tribe" shall mean any party who falls
2 within one or more of the following categories:

3 (i) successors, assigns, lessees, lenders, lender's
4 assignees, partners, investors, mortgagees, contractors, and
5 subcontractors of the Tribe with regard to one or more of the
6 Settlement Properties;

7 (ii) parties holding legal, contractual, or equitable
8 interests in one or more of the Settlement Properties; or

9 (iii) parties who, due to the presence of Historic
10 Contamination, may be considered to be an owner and operator with
11 regard to one or more of the Settlement Properties, as defined in
12 either CERCLA or the Model Toxics Control Act (Chapter 70.105D
13 RCW), as amended, or other applicable contamination laws.

14 "Past Response Costs" shall mean all costs, including, but not
15 limited to, direct and indirect costs and interest, that the United
16 States incurred and paid with regard to the Settlement Properties
17 prior to September 1, 1993.

18 "Port of Tacoma" or the "the Port" shall mean the Port of
19 Tacoma.

20 "Puyallup Tribe of Indians" or "Puyallup Tribe" or "the Tribe"
21 shall mean the Puyallup Tribe of Indians, a federally recognized
22 Indian tribe.

23 "RCRA" shall mean the Solid Waste Disposal Act, as amended,
24 42 U.S.C. §§ 6901 et seq.

25 "Record of Decision" or "ROD" shall mean the EPA Record of
26 Decision relating to the Commencement Bay Nearshore/Tideflats Site
27 signed on September 30, 1989, by the Regional Administrator, EPA
28

1 Region 10, and all attachments thereto, and is included as Appendix
2 I to this Consent Decree.

3 "Remedial Action" shall mean those activities, other than those
4 required by this Consent Decree, to be undertaken by a separate
5 action to implement the CB/NT ROD at the Inner Hylebos Property and
6 the Upper Hylebos Property.

7 "Remedial Design" shall mean those activities to be undertaken
8 to develop the final plans and specifications for the Remedial
9 Action to implement the ROD.

10 "Section" shall mean a portion of this Consent Decree identified
11 by a roman numeral.

12 "Settlement Act" shall mean the Puyallup Tribe of Indians
13 Settlement Act of 1989, June 21, 1989, P.L. 101-41, 103 Stat. 83,
14 25 U.S.C. § 1773.

15 "Settlement Agreement" shall mean the document entitled
16 "Agreement between the Puyallup Tribe of Indians, Local Governments
17 in Pierce County, the State of Washington, the United States of
18 America, and certain private property owners", dated August 27,
19 1988, and its Technical Appendices, as incorporated into federal
20 law by the Settlement Act, and is included as Appendix J to this
21 Consent Decree.

22 "Settlement Properties" shall mean the six (6) properties
23 identified by the Settlement Agreement to be transferred from the
24 Port of Tacoma to the United States to be held in trust for the
25 Tribe. The Settlement Properties include: the Inner Hylebos
26 Property; the Upper Hylebos Property; the Taylor Way Property; the
27
28

1 East-West Road Property; the Blair Waterway Property; and the Blair
2 Backup Property.

3 "Settling Defendant" shall mean the Port of Tacoma.

4 "Site" or the "CB/NT Site" shall mean the Commencement Bay
5 Nearshore/Tideflats Superfund Site, located in the City of Tacoma,
6 Pierce County, Washington, at the southern end of the main basin of
7 Puget Sound.

8 "United States" shall mean the United States of America,
9 including, but not limited to, EPA, the Bureau of Indian Affairs,
10 and the U.S. Department of Justice.

11 "Waste Material" shall mean (1) any "hazardous substance" under
12 Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); (2) any pollutant
13 or contaminant under Section 101(33), 42 U.S.C. § 9601(33); and (3)
14 any "solid waste" under Section 1004(27) of RCRA, 42 U.S.C.
15 § 6903(27).

16 "Work" shall mean all activities the Port or the Tribe is
17 required to perform under this Consent Decree, except those
18 required by Section XVIII (Retention of Records).

19 V. GENERAL PROVISIONS

20 5. Objectives of the Parties. In entering into this Consent
21 Decree, the objectives of the Parties are: (a) To assist the
22 Puyallup Tribe to enjoy the benefits of the Settlement Act by
23 facilitating implementation of the Settlement Agreement; and (b) to
24 protect the public health and welfare and the environment by
25 implementing response actions for the Settlement Properties
26 consistent with this Consent Decree and its appendices, the

1 Settlement Act, the Settlement Agreement, and the ROD for the CB/NT
2 Site.

3 6. Commitments by the Port of Tacoma.

4 a. The Port of Tacoma agrees to undertake all actions,
5 including operation and maintenance and long-term monitoring, in
6 accordance with this Consent Decree, and all plans, standards,
7 specifications, and schedules set forth in or developed and
8 approved by EPA pursuant to this Consent Decree.

9 b. The Port agrees that it shall continue to remain
10 liable, subject to and without waiving any rights provided in
11 Paragraphs 41 and 42, for the cleanup and/or remediation of any
12 Historic Contamination after the Settlement Properties have been
13 conveyed to the United States in trust for the Tribe. The Port
14 shall be responsible for monitoring, testing or other ongoing or
15 future requirements regarding Historic Contamination that either
16 have been or may be in the future imposed by EPA on the Port. The
17 Port agrees that it will be liable jointly and severally to the
18 United States, as an owner or operator under Sections 107(a)(1)
19 and/or 107(a)(2) of CERCLA, 42 U.S.C. §§ 9607(a)(1) and (2), with
20 regard to Historic Contamination on each such Settlement Property.
21 The Port agrees that the monetary ceiling in paragraph C.11.g. of
22 the Settlement Agreement (Appendix J) is not a defense to any
23 future United States enforcement actions initiated pursuant to
24 CERCLA against the Port for Historic Contamination on Settlement
25 Properties. With regard to the Inner Hylebos and Upper Hylebos
26 Properties, the Port agrees that it shall be liable for undertaking
27 any Remedial Action involving Historic Contamination of marine
28

1 sediments specified by EPA in a separate action as necessary to
2 implement the CB/NT ROD.

3 c. The Port agrees to reimburse the United States for Past
4 Response Costs and Future Response Costs as provided in this
5 Consent Decree.

6 7. Commitments by the Puyallup Tribe. The Puyallup Tribe
7 agrees to comply with all applicable Institutional Controls and any
8 other applicable limitations set forth in or required pursuant to
9 this Consent Decree, and to assure that its activities are
10 conducted in accordance with this Consent Decree. Moreover, under
11 the Settlement Act, the Tribe is not to be liable for the cleanup
12 costs or in any other manner, for contamination on Settlement
13 Properties except any contamination caused by the Tribe's
14 activities after conveyance of the Settlement Properties to the
15 United States, to be held in Trust for the Tribe, under the terms
16 of the Settlement Agreement. Furthermore, the Puyallup Tribe will
17 ensure that all activities undertaken on the Settlement Properties
18 by a Party in Privity with the Tribe are conducted in accordance
19 with this Consent Decree and all applicable Institutional Controls
20 and any other applicable limitations set forth in or required
21 pursuant to this Consent Decree. The Tribe shall provide copies of
22 Paragraphs 11 and 12 and the applicable Appendix A through F to
23 this Consent Decree to each entity directly involved with an
24 activity with respect to the Settlement Properties. The Tribe
25 agrees to inform each person who may be a Party in Privity with the
26 Tribe of this Consent Decree. The Tribe agrees to inform EPA of

1 known noncompliance with an Institutional Control that has been
2 imposed under this Consent Decree.

3 8. Compliance With Applicable Law. All activities undertaken
4 by the Port and the Tribe pursuant to this Consent Decree shall be
5 performed in accordance with the requirements of all applicable
6 federal, tribal and state laws and regulations. The Port and the
7 Tribe must also comply with all applicable or relevant and
8 appropriate requirements of all federal, tribal and state
9 environmental laws as set forth in the ROD and documents approved
10 by EPA pursuant to the Memorandum of Agreement, and in documents
11 approved by EPA pursuant to this Consent Decree. The activities
12 conducted pursuant to this Consent Decree, if approved by EPA,
13 shall be considered to be consistent with the NCP.

14 VI. PERFORMANCE OF THE WORK

15 9. The Port and the Tribe shall meet the conditions, comply
16 with the Institutional Controls, and take the precautions that are
17 specified for each property in Appendices A through F of this
18 Consent Decree.

19 10. The Port shall be responsible for monitoring, testing or
20 other ongoing or future requirements regarding Historic
21 Contamination at each Settlement Property to the extent provided
22 for in this Consent Decree. The Port and the Tribe agree to comply
23 with the terms of the Implementing Agreement and to keep EPA
24 informed of activities undertaken pursuant to the Implementing
25 Agreement by taking the measures required under Paragraphs 11 and
26 12. All notices or reports to be provided by the Tribe to the Port
27 under this Consent Decree and the Implementing Agreement shall also
28

1 be provided to EPA, as provided under Section XIX, and all notices
2 or reports to be provided by the Port to EPA under this Consent
3 Decree shall also be provided by the Port to the Tribe.

4 11. Notice of a Release or Threat of a Release

5 a. The Tribe shall provide written notice to the Port and
6 EPA within twenty-four (24) hours of the Tribe's discovery of a
7 release or threat of a release of a hazardous substance on a
8 Settlement Property, including a release or threat of a release
9 involving Historic Contamination where: (1) In the exercise of its
10 best professional judgment, the Tribe determines that the release
11 or threatened release poses a substantial threat to human health
12 and/or the environment; (2) the Tribe becomes aware that the
13 asphalt cap or the sand and gravel cover of the Capped or Covered
14 Areas of the Blair Backup Property have been or are likely to be
15 adversely affected; or (3) the Tribe is required to report the
16 release or threatened release under Section 103 of CERCLA, 42
17 U.S.C. § 9603, or Section 304 of the Emergency Planning and
18 Community Right to Know Act ("EPCRA"), 42 U.S.C. § 11004.
19 Compliance with this paragraph shall not relieve any party of any
20 notification requirements of an applicable federal, tribal or state
21 law or regulation.

22 b. Upon being notified by the Tribe of a discovery of a
23 release or the threat of a release of a hazardous substance on any
24 of the Settlement Properties, the Port shall provide written
25 notification to EPA within 5 calendar days of receiving the
26 notification from the Tribe. To the extent known, the written
27 notification by the Port shall provide the results of the Port's
28

1 investigation of the release or threat of a release, including the
2 property name; the specific source, type and location of the
3 hazardous substance(s); circumstances of the release and the
4 discovery, including but not limited to sampling results, any
5 potential imminent and substantial threat to human health and the
6 environment, justifications for decisions pertaining to site
7 activities, and notification on whether the release is suspected to
8 involve Historic Contamination; and any response actions planned,
9 completed, or underway. Compliance with this Paragraph shall not
10 relieve any party of any notification requirements of an applicable
11 federal, tribal or state law or regulation.

12 c. Within 65 days of the Port receiving notification from
13 the Tribe pursuant to Paragraph 11.a., the Port shall consult with
14 the Tribe and submit to EPA a written report that shall describe
15 the nature of the release and include complete documentation for
16 all items listed in Paragraph 11.b above. The written report shall
17 also identify whether the Port and/or Tribe have any response
18 actions planned, and the report shall include a schedule for
19 conducting the response action, for approval by EPA. The report
20 shall include comparisons to applicable state, tribal, and federal
21 criteria to be used as screening or cleanup criteria. The Port
22 shall include in the report a description of the Tribe's position
23 on the nature of the release and of the need for a response action,
24 and will identify whether the Port or the Tribe will perform the
25 response action. EPA may determine that the proposed response
26 action shall be conducted pursuant to an administrative order
27 issued under CERCLA, in which case the requirements of the
28

1 administrative order shall take the place of the remaining
2 requirements in this Paragraph 11.

3 d. Within 90 days of the Port completing any necessary
4 response actions, the Port shall submit a Completion Report to EPA
5 and the Tribe describing the response action at the property. The
6 Completion Report shall include response actions and compliance
7 monitoring planned or underway, and the Tribe's activities in and
8 concurrence (or nonconcurrence) with the response action. The Port
9 shall be responsible for coordinating response actions with the
10 Tribe, and the Port shall submit the Tribe's written concurrence as
11 part of the Completion Report.

12 e. Within 90 days of the Tribe completing any necessary
13 response actions, the Tribe shall submit a Completion Report to EPA
14 and the Port, describing the response action at the property. The
15 Completion Report shall include response actions and compliance
16 monitoring planned or underway, and the Tribe's activities in and
17 concurrence with the response action.

18 f. If the response action undertaken by the Port or the
19 Tribe is completed within 90 days of the Port or the Tribe
20 notifying EPA of the discovery of the release, as provided in
21 Paragraph 11.a., a single written report may be submitted to EPA on
22 both the release and the action taken. The report shall contain
23 all information in Paragraphs 11.b, 11.d, and 11.e above and shall
24 be submitted within 60 days of completion of the response action.

25 g. The Port and the Tribe agree to incorporate EPA
26 comments into the Work performed, including reports prepared on
27 response actions at the Settlement Properties. EPA may require
28

1 further evaluation or additional reports on Work performed, and EPA
2 may require the Port or the Tribe to perform additional Work as
3 necessary to be protective of human health, welfare and the
4 environment and to comply with applicable federal, tribal or state
5 laws and regulations. EPA specifically reserves the right to
6 determine at any point that EPA should have a direct role in
7 overseeing and directing response actions under this Paragraph,
8 including under a separate enforcement agreement.

9 h. In addition to the reporting requirements set forth in
10 this Paragraph 11.a., to the extent practicable, the Tribe shall
11 also record and maintain a permanent written record of any other
12 releases of a hazardous substance, regardless of quantity, on a
13 Settlement Property of which release the Tribe has knowledge. The
14 Tribe shall require Parties is Privity with the Tribe to report
15 such releases to the Tribe. To the extent known, the written
16 record by the Tribe shall include the property name; the specific
17 source, quantity, type, and location of the hazardous substance(s);
18 the circumstances of the release and the discovery; and any
19 response actions planned, completed, or underway. The Tribe shall
20 submit annually, in January of each year, to EPA and the Port a
21 "Puyallup Annual Release Report," certified pursuant to Paragraph
22 13, that provides the information for each release that has been
23 recorded pursuant to this Paragraph. Compliance with this
24 Paragraph shall not relieve any party of any notification
25 requirements of an applicable federal, tribal or state law or
26 regulation.

1 12. Notice of Use or Physical Activity.

2 a. The following procedures shall apply if the Tribe or a
3 Party in Privity with the Tribe proposes a use or physical activity
4 in an area of a Settlement Property that is restricted by an
5 Institutional Control imposed under this Decree.

6 (1) The Tribe shall provide timely written notice in
7 accordance with the Implementing Agreement to the Port of a use or
8 activity that the Tribe or a Party in Privity with the Tribe plans
9 to undertake at a Settlement Property. The Tribe or a Party in
10 Privity with the Tribe shall incorporate practicable construction
11 and design requirements in its development plans to avoid and
12 minimize the disturbance of Historic Contamination and to comply
13 with the Institutional Controls and restrictions set forth in
14 Appendix A through F of this Consent Decree.

15 (2) Upon receipt of a written notice under this
16 Paragraph, the Port, in consultation with the Tribe, shall promptly
17 evaluate (1) whether the planned use or activity affects an
18 Institutional Control that is imposed under this Consent Decree,
19 and (2) whether additional cleanup of Historic Contamination at the
20 Settlement Property is necessary to remain protective of human
21 health, welfare and the environment for that planned use or
22 activity.

23 (3) The Port and the Tribe shall notify EPA in
24 writing of their determination that additional cleanup of Historic
25 Contamination is necessary to remain protective of human health,
26 welfare and the environment for that planned use or activity, or
27 that the planned use or activity is inconsistent with an
28

1 Institutional Control that is imposed under this Consent Decree.
2 The notification shall identify whether the proposed activity is
3 governed by Paragraphs 12.b. or 12.c. of this Consent Decree. The
4 notification to EPA shall describe whether a response action will
5 be necessary at the Settlement Property in order for the Tribe's
6 planned use to proceed in a manner that is protective of human
7 health, welfare and the environment. The notification may also be
8 used to identify any proposal to modify or otherwise change an
9 Institutional Control.

10 (4) If the evaluation completed under Paragraph
11 12.a.(2) finds that the planned use or activity may adversely
12 affect an area or use at the Settlement Property in a manner that
13 is restricted by an Institutional Control or require modification
14 of an Institutional Control that is imposed under this Consent
15 Decree, the notification required by Paragraph 12.a. shall include,
16 to the extent known, the results of the Port's investigation at
17 that time, including the property name, the planned use or
18 activity, the Institutional Control that would apply to the planned
19 use or activity, the identification and location of the hazardous
20 substance(s) that may be disturbed, circumstances of the potential
21 release and the potential risks to human health, welfare and the
22 environment, including but not limited to sampling results, any
23 potential imminent and substantial threat to human health and the
24 environment, and justifications for decisions pertaining to site
25 activities, and any proposed response actions planned, completed,
26 or underway. Compliance with this paragraph shall not relieve any

1 party of any notification requirements of an applicable federal,
2 tribal or state law or regulation.

3 (5) If the Port's and Tribe's evaluation finds that a
4 response action is required to address the release or threat of a
5 release of Historic Contamination or to ensure that cleanup levels
6 of Historic Contamination remain protective of human health,
7 welfare and the environment, the Port and the Tribe shall follow
8 the procedures set forth above in Paragraph 11. Before proceeding
9 with a response action, the Port, in consultation with the Tribe,
10 shall submit to EPA a written report, as described in Paragraph
11 11.c., to supplement information in the notice required by
12 Paragraph 12.a.

13 b. Capped or Covered Areas of the Blair Backup
14 Property. If a use or activity is proposed on the Capped or
15 Covered Areas of the Blair Backup Property:

16 (1) The Tribe or a Party in Privity with the
17 Tribe shall incorporate practicable construction and design
18 requirements in its development plans to avoid and minimize the
19 disturbance of Historic Contamination beneath the Capped and
20 Covered Areas of the Blair Backup Property and to comply with the
21 Institutional Controls and restrictions set forth in Appendix F of
22 this Consent Decree.

23 (2) The Port and the Tribe agree that EPA may
24 disapprove of any use or physical activity proposed by the Tribe or
25 a Party in Privity with the Tribe that may adversely affect the
26 asphalt cap or the sand and gravel cover of the Capped and Covered
27 Areas of the Blair Backup Property.

1 c. Subsurface Intrusive Activities. Institutional
2 Controls imposed under this Consent Decree restrict subsurface
3 intrusive activities in five areas at four Settlement Properties,
4 as follows:

5 Peninsula Project Area of the Inner Hylebos Property (see
6 Paragraph 4.c of Appendix A);
7 East-West Road Property (see Paragraph 4.c of Appendix D)
8 Former Lincoln Avenue Ditch Area at the Blair Waterway Property
9 (see Paragraph 4.c of Appendix E)
10 Lincoln Avenue Ditch Area that was filled in 1993 at the Blair
11 Waterway Property (see Paragraph 4.d of Appendix E)
12 Capped or Covered Areas of the Blair Backup Property (see
13 Paragraphs 4.c and 4.d of Appendix F).

14 For these five areas, the Port and Tribe and Parties in Privity
15 with the Tribe agree to comply with the Institutional Controls and
16 restrictions set forth in Appendices A, D, E, and F of this Consent
17 Decree and the notification requirements set forth in this
18 Paragraph.

19 d. EPA may disapprove any use or activity proposed by the
20 Tribe or a Party in Privity with the Tribe, or any response action
21 proposed by the Port or the Tribe or a Party in Privity with the
22 Tribe, that may be inconsistent with an Institutional Control
23 imposed under this Consent Decree. Upon the request of the Tribe
24 or the Port, EPA will consider modifying an Institutional Control
25 pursuant to Section XXIII to permit a proposed use or activity.
26 EPA will evaluate in a timely manner the request to determine
27 whether the planned use or physical activity can be accomplished in
28 a manner protective of human health, welfare, and the environment.

29 e. The Port and the Tribe agree to incorporate EPA
30 comments into the Work performed and reports prepared on the
31 Settlement Properties. As directed by EPA, the Port and the Tribe

1 agree to further evaluate or prepare additional reports on Work
2 performed, to perform additional Work as necessary to be protective
3 of human health and the environment, and to comply with applicable
4 federal, tribal or state laws and regulations. EPA specifically
5 reserves the right to determine at any point that EPA should have a
6 direct role in overseeing and directing the Work under this
7 Paragraph, including under a separate enforcement agreement.

8 f. EPA's determinations for the following are reviewable
9 only in administrative dispute resolution proceedings under Section
10 XIV: 1) a use or physical activity that may adversely affect the
11 asphalt cap or the sand and gravel cover of the Capped or Covered
12 Areas of the Blair Backup Property; 2) subsurface intrusive
13 activities that may occur in an area of a Settlement Property where
14 that activity is restricted by an Institutional Control; or 3) a
15 proposed use or activity that will require modification or changes
16 to an Institutional Control. EPA shall make its determination in a
17 timely manner.

18 13. For each report submitted pursuant to this Consent Decree,
19 a responsible official representing the Port or the Tribe shall
20 certify the information contained in the report is true, accurate
21 and complete. The following certification shall be signed by a
22 responsible official on behalf of the Port or the Tribe:

23 "In accordance with 28 U.S.C. § 1746, I certify under penalty of
24 perjury under the laws of the United States that the information
25 contained in and accompanying this certification is true, accurate,
26 and complete. As to (the) (those) identified portion(s) of this
(submission) (document) for which I cannot personally verify (its)
(their) truth and accuracy, I certify as the responsible official
having supervisory responsibility for the person(s) who, acting

1 under my direct instructions made the verification, that this
2 information is true, accurate, and complete. Dated this ___ day of
3 ____, ____."

4 14. The absence of express EPA comment, approval or disapproval
5 of any submission within any specified time period shall not be
6 construed as approval by EPA.

7 15. The Port shall, prior to any off-site shipment of Waste
8 Material from the Settlement Properties to an out-of-state waste
9 management facility, provide written notification to the
10 appropriate state environmental official in the receiving
11 facility's state and to the EPA Project Coordinator of such
12 shipment of Waste Material. However, this notification requirement
13 shall not apply to any off-site shipments when the total volume of
14 all such shipments will not exceed 10 cubic yards.

15 a. The Port shall include in the written notification the
16 following information, where available: (1) the name and location
17 of the facility to which the Waste Material are to be shipped; (2)
18 the type and quantity of the Waste Material to be shipped; (3) the
19 expected schedule for the shipment of the Waste Material; and (4)
20 the method of transportation. The Port shall notify the state in
21 which the planned receiving facility is located of major changes in
22 the shipment plan, such as a decision to ship the Waste Material to
23 another facility within the same state, or to a facility in another
24 state.

25 b. The Port shall provide the information required by
26 Paragraph 15.a as soon as practicable after the award of the
27 contract and before the Waste Material is actually shipped.
28

1 VII. QUALITY ASSURANCE, SAMPLING, and DATA ANALYSIS

2 16. Throughout all sample collection, transportation, and
3 analysis activities, the Port and the Tribe and any Party in
4 Privity with the Tribe shall use procedures for quality assurance,
5 quality control, and chain-of-custody in complete accordance with
6 procedures followed by EPA and consistent with EPA guidelines.

7 17. Notwithstanding any provision of this Consent Decree, the
8 United States hereby retains all of its information gathering and
9 inspection authorities and rights, including enforcement actions
10 related thereto, under CERCLA, RCRA and any other applicable
11 statutes or regulations.

12 VIII. ACCESS

13 18. a. Commencing upon the date of lodging of this Consent
14 Decree, the Port and the Tribe, to the extent that the Port or the
15 Tribe then has a possessory interest in one or more of the
16 Settlement Properties, agree to provide the other Parties and their
17 representatives, including EPA and its contractors, access at all
18 reasonable times to the Settlement Properties, and the Tribe agrees
19 that each Party in Privity with the Tribe shall provide access to
20 the Settlement Properties for the purposes of conducting any
21 activity related to this Consent Decree including, but not limited
22 to:

23 i. Monitoring response actions;

24 ii. Verifying any data or information submitted to the
25 United States;

26 iii. Conducting investigations relating to contamination
27 at or near the Settlement Properties;

1 iv. Obtaining samples;

2 v. Assessing the need for, planning, or implementing
3 additional response actions at or near the Settlement Properties;

4 vi. Inspecting and copying records, operating logs,
5 contracts, or other documents maintained or generated by the Port
6 or the Tribe or their agents, consistent with Section XVIII; and

7 vii. Assessing the Port's, the Tribe's, and any of the
8 Parties in Privity with the Tribe compliance with this Consent
9 Decree.

10 b. The obligations of the Port and the Tribe with respect
11 to the provision of access under Paragraph 18.a. shall run with the
12 land and shall be binding upon any and all persons who subsequently
13 acquire any such interest or portion thereof ("Successors-in-
14 Title"). Within 15 days after the entry of this Consent Decree or
15 the transfer of the Settlement Property to the United States in
16 trust for the Tribe, whichever is later, the Tribe shall record
17 either at the Registry of Deeds for Pierce County, Washington, or
18 with the appropriate office of the Bureau of Indian Affairs, a
19 notice of obligation to provide access, as provided by this
20 Section, and related covenants, as described in Section VI and
21 Appendices A through F to this Consent Decree, and shall provide a
22 written notice to EPA of compliance with this Paragraph. Each
23 subsequent instrument conveying an interest to a Settlement
24 Property shall reference the recorded location of such notice and
25 covenants applicable to such Settlement Property.

26 19. To the extent that any other property to which access is
27 required for the implementation of this Consent Decree is owned or
28

1 controlled by persons other than Tribe or the Port, the Port shall
2 use best efforts to secure from such persons access for the Parties
3 and their representatives, including, but not limited to, their
4 contractors, as necessary to effectuate this Consent Decree. For
5 purposes of this Paragraph "best efforts" includes the payment of
6 reasonable sums of money in consideration of access. If any access
7 required to complete activities under this Consent Decree is not
8 obtained within 45 days of the date EPA notifies the Port and Tribe
9 in writing that additional access beyond that previously secured is
10 necessary, the Port shall promptly notify the United States, and
11 shall include in that notification a summary of the steps the Port
12 has taken to attempt to obtain access. The United States may, as
13 it deems appropriate, assist the Port in obtaining access. The
14 Port shall reimburse the United States, in accordance with the
15 procedures in Section XII (Reimbursement of Response Costs), for
16 all costs incurred by the United States in obtaining access.

17 20. Notwithstanding any provision of this Consent Decree, the
18 United States retains all of its access authorities and rights,
19 including enforcement authorities related thereto, under CERCLA,
20 RCRA and any other applicable statute or regulations.

21 IX. REPORTING RELEASES

22 21. Upon the occurrence of any event during performance of
23 activities on the Settlement Properties that the Port or the Tribe
24 are required to report pursuant to Section 103 of CERCLA, 42 U.S.C.
25 § 9603, or Section 304 of the Emergency Planning and Community
26 Right-to-know Act (EPCRA), the party shall within 24 hours of the
27 on-set of such event orally notify the EPA Project Coordinator or
28

1 the Alternate EPA Project Coordinator (in the event of the
2 unavailability of the EPA Project Coordinator), or, in the event
3 that neither the EPA Project Coordinator or Alternate EPA Project
4 Coordinator is available, the Emergency Response Section, Region
5 10, United States Environmental Protection Agency. These reporting
6 requirements are in addition to the reporting required by CERCLA
7 Section 103, 42 U.S.C. § 9603, or EPCRA Section 304.

8 22. Within 20 days of the onset of such an event, the Port and
9 the Tribe shall furnish to EPA a written report, signed by the
10 Party's Project Coordinator, setting forth the events which
11 occurred and the measures taken, and to be taken, in response
12 thereto. Within 30 days of the conclusion of such an event, the
13 Port and the Tribe shall submit a report setting forth all actions
14 taken in response thereto.

15 X. PROJECT COORDINATORS

16 23. Documents including reports, approvals, disapprovals, and
17 other correspondence which must be submitted under this Consent
18 Decree, shall be sent by certified mail, return receipt requested,
19 to the following addressees or to any other addressees which Port,
20 the Tribe, and EPA designate in writing.

21 a. One copy of documents to be submitted to EPA shall be
22 forwarded to:

23 Karen L. Keeley, HW-113
24 U.S. EPA, Region 10
25 1200 Sixth Avenue
26 Seattle, WA 98101

27 b. One copy of documents to be submitted the Port shall be
28 forwarded to:

1 Curtis Ratcliffe
2 Port of Tacoma
3 P.O. Box 1837
4 Tacoma, WA 98401-1837

5 c. Two (2) copies of documents to be submitted to the
6 Tribe shall be forwarded to:

7 Bill Sullivan
8 Puyallup Tribe
9 2002 East 28th Street
10 Tacoma, WA 98404

11 24. EPA may designate other representatives, including, but not
12 limited to, EPA employees, and federal contractors and consultants,
13 to observe and monitor the progress of any activity undertaken
14 pursuant to this Consent Decree. EPA's Project Coordinator shall
15 have the authority lawfully vested in a Remedial Project Manager
16 ("RPM") and an On-Scene Coordinator ("OSC") by the National
17 Contingency Plan, 40 C.F.R. Part 300. In addition, EPA's Project
18 Coordinator shall have authority, consistent with the National
19 Contingency Plan, to halt any Work required by this Consent Decree
20 and to take any necessary response action when s/he determines that
21 conditions at the Settlement Properties constitute an emergency
22 situation or may present an immediate threat to public health or
23 welfare or the environment due to a release or threatened release
24 of Waste Material.

25 XI. EMERGENCY RESPONSE

26 25. In the event of any action or occurrence during the
27 performance of the Work which causes or threatens a release of
28 Waste Material from the Settlement Properties that constitutes an
emergency situation or may present an immediate threat to public
health or welfare or the environment, the Port and the Tribe shall,

1 in addition to the notification requirements of Paragraph 11,
2 immediately take all appropriate action to prevent, abate, or
3 minimize such release or threat of release, and shall immediately
4 notify the EPA's Project Coordinator, or, if the EPA Project
5 Coordinator is not available, the Port and the Tribe shall notify
6 the EPA Superfund Response and Investigations Branch, EPA Region
7 10. The Port and the Tribe shall take such actions in consultation
8 with EPA's Project Coordinator or other available authorized EPA
9 officer and in accordance with all applicable provisions of the
10 Health and Safety Plans, the Contingency Plans, and any other
11 applicable plans or documents developed pursuant to this Consent
12 Decree. In the event that the Port and the Tribe fail to take
13 appropriate response action as required by this Section, and EPA
14 takes such action instead, the Port shall reimburse EPA all costs
15 of the response action not inconsistent with the NCP pursuant to
16 Section XII (Reimbursement of Response Costs).

17 26. Nothing in the preceding Paragraph or in this Consent
18 Decree shall be deemed to limit any authority of the United States
19 to take, direct, or order all appropriate action or to seek an
20 order from the Court to protect human health, welfare and the
21 environment or to prevent, abate, respond to, or minimize an actual
22 or threatened release of Waste Material on, at, or from the
23 Settlement Properties.

24 XII. REIMBURSEMENT OF RESPONSE COSTS

25 27. Within 30 days of the effective date of this Consent
26 Decree, the Port shall pay to the United States \$65,690.84 in full
27 reimbursement of Past Response Costs. The payments shall be made
28

1 by Electronic Funds Transfer ("EFT" or wire transfer) to the United
2 States Department of Justice lockbox bank, referencing the Puyallup
3 Land Transfer Consent Decree, CERCLA Number K8, DOJ Case No.
4 90-11-2-737, and U.S.A.O. file number _____, in
5 reimbursement of Past Response Costs. Payment shall be made in
6 accordance with instructions provided by the United States to the
7 Port upon execution of the consent decree. Payments by EFT must be
8 received at the U.S. D.O.J. lockbox bank by 4:00 p.m. (Eastern
9 Time) to be credited on that day.

10 28. The Port shall reimburse the United States for all Future
11 Response Costs not inconsistent with the National Contingency Plan
12 incurred by the United States. The United States will send the
13 Port a bill requiring payment that includes a prepared cost
14 summary, which includes direct and indirect costs incurred by EPA
15 and DOJ and their contractors, on an annual basis. The Port shall
16 make all payments within sixty (60) days of the Port's receipt of
17 each bill requiring payment. The Port shall forward the certified
18 check(s) to the U.S. EPA Superfund, P.O. Box 360903M, Pittsburgh,
19 Pennsylvania 15251, payable to "EPA Hazardous Substances Response
20 Superfund" and shall reference the Puyallup Land Transfer Consent
21 Decree and civil action number. A copy of such check with an
22 explanatory transmittal letter shall be sent to the Director of the
23 Hazardous Waste Division, EPA, Region 10, the EPA Project
24 Coordinator and the EPA Hearing Clerk, Office of Regional Counsel,
25 EPA, Region 10, and to the U.S. Department of Justice as specified
26 in Section XIX (Notices and Submissions).

29. The Port may contest payment of any Future Response Costs under Paragraph 28 if it determines that the United States has made an accounting error or if it alleges that a cost item that is included represents costs that are inconsistent with the NCP. Such objection shall be made in writing within 60 days of receipt of the bill and must be sent to the United States (if the United States' accounting is being disputed) pursuant to Section XIX (Notices and Submissions). Any such objection shall specifically identify the contested Future Response Costs and the basis for objection. In the event of an objection, the Port shall within the 60 day period pay all uncontested Future Response Costs to the United States in the manner described in Paragraph 28. Simultaneously, the Port shall establish an interest bearing escrow account in a federally-insured bank duly chartered in the State of Washington and remit to that escrow account funds equivalent to the amount of the contested Future Response Costs. The Port shall send to the United States, as provided in Section XIX (Notices and Submissions), a copy of the transmittal letter and check paying the uncontested Future Response Costs, and a copy of the correspondence that establishes and funds the escrow account, including, but not limited to, information containing the identity of the bank and bank account under which the escrow account is established as well as a bank statement showing the initial balance of the escrow account. Simultaneously with establishment of the escrow account, the Port shall initiate the Dispute Resolution procedures in Section XIV (Dispute Resolution). If the United States prevails in the dispute, within 5 days of the resolution of the dispute, the Port shall pay the

1 sums due (with accrued interest) to the United States in the manner
2 described in Paragraph 28. If the Port prevails concerning any
3 aspect of the contested costs, the Port shall pay that portion of
4 the costs (plus associated accrued interest) for which it did not
5 prevail to the United States in the manner described in Paragraph
6 28; the Port shall be disbursed any balance of the escrow account.
7 The dispute resolution procedures set forth in this Paragraph in
8 conjunction with the procedures set forth in Section XIV (Dispute
9 Resolution) shall be the exclusive mechanisms for resolving
10 disputes regarding the Port's obligation to reimburse the United
11 States for its Future Response Costs.

12 30. In the event that the payments required by Paragraph 27 are
13 not made within 30 days of the effective date of this Consent
14 Decree or the payments required by Paragraph 28 are not made within
15 60 days of the Port's receipt of the bill, the Port shall pay
16 interest on the unpaid balance at the rate established pursuant to
17 Section 107(a) of CERCLA, 42 U.S.C. § 9607. In the event that
18 payments are not made as required by Paragraphs 27 and 28, the
19 interest on Past Response Costs shall begin to accrue as of the
20 effective date of the Consent Decree, and the interest on Future
21 Response Costs shall begin to accrue on the date of the Port's
22 receipt of the bill. Interest shall accrue at the rate specified
23 through the date of the Port's payment. Payments of interest made
24 under this Paragraph shall be in addition to such other remedies or
25 sanctions available to the United States by virtue of the Port's
26 failure to make timely payments under this Section.

XIII. INDEMNIFICATION

31. The United States does not assume any liability by entering into this agreement or by virtue of any designation of the Port or the Tribe as EPA's authorized representatives under Section 104(e) of CERCLA. The Port shall indemnify, save and hold harmless the United States and its officials, agents, employees, contractors, subcontractors, or representatives for or from any and all claims or causes of action arising from, or on account of, acts or omissions of the Port, their officers, directors, employees, agents, contractors, subcontractors, and any persons acting on their behalf or under their control, in carrying out activities pursuant to this Consent Decree, including, but not limited to, any claims arising from any designation of a Party as EPA's authorized representatives under Section 104(e) of CERCLA, 42 U.S.C. § 9604(e). The Tribe shall indemnify, save and hold harmless the United States and its officials, agents, employees, contractors, subcontractors, or representatives for or from any and all claims or causes of action arising from, or on account of, acts or omissions of the Tribe, its officers, directors, employees, agents, contractors, subcontractors, any persons acting on their behalf or under their control, and Parties in Privity with the Tribe, in carrying out activities pursuant to this Consent Decree, including, but not limited to, any claims arising from any designation of a Party as EPA's authorized representatives under Section 104(e) of CERCLA, 42 U.S.C. § 9604(e). Further, the Port agrees to pay the United States all costs it incurs including, but not limited to, attorneys fees and other expenses of litigation and settlement

1 arising from, or on account of, claims made against the United
2 States based on acts or omissions of the Port, its officers,
3 directors, employees, agents, contractors, subcontractors, and any
4 persons acting on their behalf or under their control, in carrying
5 out activities pursuant to this Consent Decree. The United States
6 shall not be held out as a party to any contract entered into by or
7 on behalf of the Port or the Tribe in carrying out activities
8 pursuant to this Consent Decree. Neither the Port, the Tribe, nor
9 any such contractor shall be considered an agent of the United
10 States.

11 32. The Port and the Tribe waive all claims against the United
12 States for damages or reimbursement or for set-off of any payments
13 made or to be made to the United States, arising from or on account
14 of any contract, agreement, or arrangement between the Port or the
15 Tribe and any person for performance of activities on or relating
16 to the Settlement Properties, including, but not limited to, claims
17 on account of construction delays. In addition, the Port and the
18 Tribe shall indemnify and hold harmless the United States with
19 respect to any and all claims for damages or reimbursement arising
20 from or on account of any contract, agreement, or arrangement
21 between any person for performance of Work on or relating to the
22 Settlement Properties, including, but not limited to, claims on
23 account of construction delays. The Tribe reserves, and this
24 Consent Decree is without prejudice to, any claims the Tribe may
25 have against the United States based on the United States' trust
26 responsibilities to the Tribe.

1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8

a. In the event that the parties cannot resolve a dispute by informal negotiations under the preceding Paragraph, then the position advanced by EPA shall be considered binding unless, within 10 days after the conclusion of the informal negotiation period, the Port or the Tribe invoke the formal dispute resolution procedures of this Section by serving on EPA a written Statement of Position on the matter in dispute, including, but not limited to, any factual data, analysis or opinion supporting that position and

1 any supporting documentation relied upon by the Port or the Tribe.
2 The Statement of Position shall specify the Port's or the Tribe's
3 position as to whether formal dispute resolution should proceed
4 under Paragraph 36 or 37.

5 b. Within fourteen (14) days after receipt of the Port's or the
6 Tribe's Statement of Position, EPA will serve on the Parties its
7 Statement of Position, including, but not limited to, any factual
8 data, analysis, or opinion supporting that position and all
9 supporting documentation relied upon by EPA. EPA's Statement of
10 Position shall include a statement as to whether formal dispute
11 resolution should proceed under Paragraph 36 or 37.

12 c. If there is disagreement between EPA and the Port or the
13 Tribe as to whether dispute resolution should proceed under
14 Paragraph 36 or 37, the parties to the dispute shall follow the
15 procedures set forth in the paragraph determined by EPA to be
16 applicable. However, if the Port or the Tribe ultimately appeals
17 to the Court to resolve the dispute, the Court shall determine
18 which paragraph is applicable in accordance with the standards of
19 applicability set forth in Paragraphs 36 and 37.

20 36. Formal dispute resolution for disputes pertaining to the
21 selection or adequacy of any response action and all other disputes
22 that are accorded review on the administrative record under
23 applicable principles of administrative law shall be conducted
24 pursuant to the procedures set forth in this Paragraph. For
25 purposes of this Paragraph, the adequacy of any response action
26 includes, without limitation: (1) the adequacy or appropriateness
27 of plans, procedures to implement plans, or any other items
28

1 requiring approval by EPA under this Consent Decree; and (2) the
2 adequacy of the performance of response actions taken pursuant to
3 this Consent Decree. Nothing in this Consent Decree shall be
4 construed to allow any dispute by the Port or the Tribe regarding
5 the validity of provisions of the ROD for the CB/NT Site, the
6 Settlement Agreement, the Settlement Act, or the Implementing
7 Agreement.

8 a. An administrative record of the dispute shall be
9 maintained by EPA and shall contain all statements of position,
10 including supporting documentation, submitted pursuant to this
11 Paragraph. Where appropriate, EPA may allow submission of
12 supplemental statements of position by the parties to the dispute.

13 b. The Director of the Hazardous Waste Division, EPA
14 Region 10, will issue a final administrative decision resolving the
15 dispute based on the administrative record described in Paragraph
16 36.a. This decision shall be binding upon the Port and the Tribe,
17 subject only to the right to seek judicial review pursuant to
18 Paragraph 36.c. and d.

19 c. Any administrative decision made by EPA pursuant to
20 Paragraph 36.b. shall be reviewable by this Court, provided that a
21 notice of judicial appeal is filed by the Port or the Tribe with
22 the Court and served on all Parties within 10 days of receipt of
23 EPA's decision. The notice of judicial appeal shall include a
24 description of the matter in dispute, the efforts made by the
25 parties to resolve it, the relief requested, and the schedule, if
26 any, within which the dispute must be resolved to ensure orderly

1 implementation of this Consent Decree. The United States may file
2 a response to the Port's or the Tribe's notice of judicial appeal.

3 d. In proceedings on any dispute governed by this
4 Paragraph, the Port or the Tribe shall have the burden of
5 demonstrating that the decision of the Hazardous Waste Division
6 Director is arbitrary and capricious or otherwise not in accordance
7 with law. Judicial review of EPA's decision shall be on the
8 administrative record compiled pursuant to Paragraph 36.a.

9 37. Formal dispute resolution for disputes that neither pertain
10 to the selection or adequacy of any response action nor are
11 otherwise accorded review on the administrative record under
12 applicable principles of administrative law, shall be governed by
13 this Paragraph.

14 a. Following receipt of a party's Statement of Position
15 submitted pursuant to Paragraph 35, the Director of the Hazardous
16 Waste Division, EPA Region 10, will issue a final decision
17 resolving the dispute. The Hazardous Waste Division Director's
18 decision shall be binding on the Port and the Tribe unless, within
19 10 days of receipt of the decision, the Port or the Tribe file with
20 the Court and serve on the parties a notice of judicial appeal
21 setting forth the matter in dispute, the efforts made by the
22 parties to resolve it, the relief requested, and the schedule, if
23 any, within which the dispute must be resolved to ensure orderly
24 implementation of the Consent Decree. The United States may file a
25 response to the Port's or the Tribe's notice of judicial appeal.

26 b. Judicial review of any dispute governed by this
27 Paragraph shall be governed by applicable provisions of law.
28

1 38. The invocation of formal dispute resolution procedures
2 under this Section shall not extend, postpone or affect in any way
3 any obligation of the Port or the Tribe under this Consent Decree
4 not directly in dispute, unless EPA or the Court agrees otherwise.

5 39. In the event EPA determines that the Port or the Tribe have
6 failed to implement any provisions of the Work in an adequate or
7 timely manner, EPA may perform any and all portions of the Work as
8 EPA determines necessary. The Port or the Tribe may invoke the
9 procedures set forth in Section XIV (Dispute Resolution) to dispute
10 EPA's determination that a party failed to implement a provision of
11 the Work in an adequate or timely manner as arbitrary and
12 capricious or otherwise not in accordance with law. Such dispute
13 shall be resolved on the administrative record. Costs incurred by
14 the United States in performing the Work pursuant to this Paragraph
15 shall be considered Future Response Costs that the Port shall pay
16 pursuant to Section XII (Reimbursement of Response Costs).

17 40. Notwithstanding any other provision of this Consent Decree,
18 the United States retains all authority and reserves all rights to
19 take any and all response actions authorized by law.

20 XV. COVENANTS BY THE PORT AND THE TRIBE

21 41. The Port and the Tribe hereby covenant not to sue and agree
22 not to assert any claims or causes of action against the United
23 States with respect to this Consent Decree, including, but not
24 limited to, any direct or indirect claim for reimbursement from the
25 Hazardous Substance Superfund (established pursuant to the Internal
26 Revenue Code, 26 U.S.C. § 9507) through Sections 106(b)(2), 111,
27 112, and 113 of CERCLA, 42 U.S.C. §§ 9611, 9612, and 9613, or any
28

1 other provision of law, any claim against the United States,
2 including any department, agency or instrumentality of the United
3 States under Sections 107 or 113 of CERCLA, 42 U.S.C. §§ 9607 and
4 9613, related to the Settlement Properties, or any claims arising
5 out of response activities at the Settlement Properties. However,
6 the Port and the Tribe reserve, and this Consent Decree is without
7 prejudice to, actions against the United States based on negligent
8 actions taken directly by the United States (not including
9 oversight or approval of the Port or the Tribe plans or activities)
10 that are brought pursuant to any statute other than CERCLA and for
11 which the waiver of sovereign immunity is found in a statute other
12 than CERCLA. The Tribe reserves, and this Consent Decree is
13 without prejudice to, any claims the Tribe may have against the
14 United States based the United States' trust responsibilities to
15 the Tribe. Nothing in this Consent Decree shall be deemed to
16 constitute preauthorization of a claim within the meaning of
17 Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).

18 XVI. EFFECT OF SETTLEMENT; CONTRIBUTION PROTECTION

19 42. Nothing in this Consent Decree shall be construed to create
20 any rights in, or grant any cause of action to, any person not a
21 party to this Consent Decree. The preceding sentence shall not be
22 construed to waive or nullify any rights that any person not a
23 signatory to this decree may have under applicable law. Each of
24 the Parties expressly reserves any and all rights (including, but
25 not limited to, any right to contribution), defenses, claims,
26 demands, and causes of action which each party may have with
27 respect to any matter, transaction, or occurrence relating in any
28

1 way to the Settlement Properties against any person not a party
2 hereto.

3 43. With regard to claims for contribution against the Port of
4 Tacoma and the Tribe for matters addressed in this Consent Decree,
5 the Parties hereto agree that the Port and the Tribe are entitled
6 to such protection from contribution actions or claims as is
7 provided by Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2).

8 44. The Port and the Tribe agree that with respect to any suit
9 or claim for contribution brought by them for matters related to
10 this Consent Decree they will notify the United States in writing
11 no later than 60 days prior to the initiation of such suit or
12 claim.

13 45. The Port and the Tribe also agree that with respect to any
14 suit or claim for contribution brought against them for matters
15 related to this Consent Decree they will notify in writing the
16 United States within 10 days of service of the complaint on them.
17 In addition, the Port or the Tribe shall notify the United States
18 within 10 days of service or receipt of any Motion for Summary
19 Judgment and within 10 days of receipt of any order from a court
20 setting a case for trial.

21 46. In any subsequent administrative or judicial proceeding
22 initiated by the United States for injunctive relief, recovery of
23 response costs, or other appropriate relief relating to the
24 Settlement Properties, the Port shall not assert, and may not
25 maintain, any defense or claim based upon the principles of waiver,
26 res judicata, collateral estoppel, issue preclusion, claim-
27 splitting, or other defenses based upon any contention that the
28

1 claims raised by the United States in the subsequent proceeding
2 were or should have been brought in the instant case.

3 XVII. NO ACTION ASSURANCES

4 47. Pursuant to the Puyallup Tribe of Indians Settlement Act of
5 1989, 25 U.S.C. § 1773, the Tribe is not liable for Historic
6 Contamination on Settlement Properties. EPA recognizes that the
7 Settlement Act is a unique statement of federal policy. EPA has
8 considered this policy, EPA's Policy Against "No Action"
9 Assurances, the Port of Tacoma's agreement to accept liability to
10 the United States and the Tribe for Historic Contamination, and the
11 specific facts and law of this situation in entering into this
12 Agreement. Accordingly, the United States, on behalf of EPA,
13 provides to the Tribe the following assurance of no action.

14 48. In order to assist the Tribe to enjoy the full benefits of
15 the Settlement Agreement, and to reflect the Port's continuing
16 liability for Historic Contamination, EPA will refrain from
17 instituting an enforcement action under CERCLA, RCRA § 7003, or
18 Section 311(f) of the Federal Water Pollution Control Act against
19 the Tribe or a Party in Privity with the Tribe for a release solely
20 involving Historic Contamination on the Settlement Properties.
21 This no action assurance applies only to Historic Contamination,
22 and does not apply to a release of a hazardous substance, which is
23 not Historic Contamination, that occurs on a Settlement Property
24 after title to the Settlement Property has been conveyed to the
25 United States to hold in trust for the benefit of the Tribe. The
26 following circumstances shall not be considered "a release solely
27
28

1 involving Historic Contamination on the Settlement Properties," and
2 this assurance does not apply:

3 a. In circumstances where the Tribe or a Party in Privity
4 with the Tribe is not in compliance with all of the Institutional
5 Controls and procedures, including notices, set forth in or
6 required under this Consent Decree, including its Appendices and
7 the Implementing Agreement, or in modifications to such Appendices
8 approved pursuant to this Consent Decree, that are applicable to
9 the specific Settlement Property and where such noncompliance
10 causes or is a contributing factor to the release of Historic
11 Contamination. This agreement at Paragraph 18 provides that the
12 Tribe or a Party in Privity with the Tribe grants to EPA, its
13 authorized representatives, and other persons performing response
14 actions under agreement with the United States an irrevocable right
15 of access to the Settlement Properties for the purposes of
16 monitoring performance of response actions, as EPA deems necessary;

17 b. In circumstances where the Tribe or a Party in Privity
18 with the Tribe performs or conducts a physical activity that EPA
19 has disapproved pursuant to the Consent Decree, and such activity
20 contributes to the release of Historic Contamination on any of the
21 Settlement Properties, whether or not such activities were
22 conducted in accordance with other requirements of this Consent
23 Decree and its Appendices, or in modifications to such Appendices
24 approved pursuant to this Consent Decree, or of the Implementing
25 Agreement;

26 c. In circumstances where the Tribe or a Party in Privity
27 with the Tribe is responsible for a release of a hazardous
28

1 substance or hazardous material on any of the Settlement
2 Properties, where such substance or material that is released does
3 not meet the definition of Historic Contamination;

4 d. Where the release of Historic Contamination involves:

5 i. A party who caused or contributed to the release
6 of Historic Contamination on a Settlement Property prior to
7 transfer to the United States to be held in trust for the Tribe.

8 ii. A party in privity with the Tribe for matters
9 that do not involve the Settlement Properties.

10 iii. The Port of Tacoma;

11 e. In circumstances where EPA decides that the
12 circumstance does not concern "a release solely involving Historic
13 Contamination on a Settlement Property subject to this Consent
14 Decree." The decision whether the Tribe or the Party in Privity
15 with the Tribe has met its burden of convincing EPA, and whether
16 the assurance provided by the Paragraph applies, shall be made by
17 EPA subject only to the procedures set forth in the Dispute
18 Resolution procedures in Section XIV of this Consent Decree. EPA's
19 determination shall be subject to judicial review only to the
20 extent and in the manner provided in Paragraph 36, which shall be
21 the exclusive mechanism for resolving whether the assurance in this
22 Paragraph applies, and shall not be subject to judicial review in
23 any other proceeding; or

24 f. If the United States no longer holds the subject
25 Settlement Property in trust for the Tribe.
26
27
28

1 XVIII. ACCESS TO INFORMATION; RETENTION OF RECORDS

2 49. The Port and the Tribe shall provide to EPA, upon request,
3 copies of all documents and information within their possession or
4 control or that of their contractors or agents relating to
5 activities at the Settlement Properties or to the implementation of
6 this Consent Decree, including, but not limited to, sampling,
7 analysis, chain of custody records, manifests, trucking logs,
8 receipts, reports, sample traffic routing, correspondence, or other
9 documents or information related to the activities under this
10 Consent Decree. The Port and the Tribe shall also make available
11 to EPA, for purposes of investigation, information gathering, or
12 testimony, their employees, agents, or representatives with
13 knowledge of relevant facts concerning the performance of the Work.

14 50. a. The Parties may assert business confidentiality claims
15 covering part or all of the documents or information submitted to
16 EPA under this Consent Decree to the extent permitted by and in
17 accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. §
18 9604(e)(7), and 40 C.F.R. § 2.203(b). Documents or information
19 determined to be confidential by EPA will be afforded the
20 protection specified in 40 C.F.R. Part 2, Subpart B. If no claim
21 of confidentiality accompanies documents or information when they
22 are submitted to EPA, or if EPA has notified the Parties that the
23 documents or information are not confidential under the standards
24 of Section 104(e)(7) of CERCLA, 42 U.S.C. § 9607(e)(7), the public
25 may be given access to such documents or information without
26 further notice.

1 b. The Port or the Tribe may assert that certain documents,
2 records and other information are privileged under the attorney-
3 client privilege or any other privilege recognized by federal law.
4 If a Party asserts such a privilege in lieu of providing documents,
5 they shall provide the EPA with the following: (1) the title of
6 the document, record, or information; (2) the date of the document,
7 record, or information; (3) the name and title of the author of the
8 document, record, or information; (4) the name and title of each
9 addressee and recipient; (5) a description of the contents of the
10 document, record, or information; and (6) the privilege asserted by
11 the Party. However, no documents, reports or other information
12 created or generated pursuant to the requirements of the Consent
13 Decree shall be withheld on the grounds that they are privileged.

14 51. No claim of confidentiality shall be made with respect to
15 any data, including, but not limited to, all sampling, analytical,
16 monitoring, hydrogeologic, scientific, chemical, or engineering
17 data, or any other documents or information evidencing conditions
18 at or around the Settlement Properties.

19 52. The Port and the Tribe shall preserve, for a minimum of
20 ten (10) years after preparation, all records and documents in
21 possession or control of its divisions, employees, agents,
22 accountants, contractors, or attorneys which relate in any way to
23 activities conducted under this Consent Decree, despite any
24 document retention policy to the contrary.

25 53. At the conclusion of this document retention period, the
26 Parties shall notify the United States at least 90 days prior to
27 the destruction of any such records or documents, and, upon request
28

1 by the United States, the Parties shall deliver any such records or
2 documents to EPA.

3 XIX. NOTICES AND SUBMISSIONS

4 54. Whenever, under the terms of this Consent Decree, written
5 notice is required to be given or a report or other document is
6 required to be sent by one party to another, it shall be directed
7 to the individuals at the addresses specified below, unless those
8 individuals or their successors give notice of a change to the
9 other parties in writing; provided, however, the notices and
10 submissions required under Section VI or the Appendices A through G
11 to this Consent Decree shall be directed to the Project
12 Coordinators of EPA, the Puyallup Tribe, and the Port specified in
13 Paragraph 23. All notices and submissions shall be considered
14 effective upon receipt, unless otherwise provided. Written notice
15 as specified herein shall constitute complete satisfaction of any
16 written notice requirement of the Consent Decree with respect to
17 the United States, EPA, the Tribe, and the Port, respectively.

18 As to the United States:

19 Chief, Environmental Enforcement Section
20 Environment and Natural Resources Division
21 U.S. Department of Justice
22 P.O. Box 7611
23 Ben Franklin Station
24 Washington, D.C. 20044

25 Re: DOJ # _____

26 and

27 Director, Hazardous Waste Division
28 United States Environmental Protection Agency
Region 10
1200 Sixth Avenue
Seattle, Washington 98101

1 As to EPA:

2 Karen Keeley
3 EPA Project Coordinator
4 United States Environmental Protection Agency
5 Region 10
6 1200 Sixth Avenue (HW-113)
7 Seattle, Washington 98101

8 As to the Puyallup Tribe:

9 Bill Sullivan
10 Environmental Department
11 Puyallup Tribe of Indians
12 2002 East 28th Street
13 Tacoma, Washington 98404

14 As to the Port of Tacoma:

15 Curtis Ratcliffe
16 Port of Tacoma
17 P.O. Box 1837
18 Tacoma, WA 98401-1837

19 XX. EFFECTIVE DATE

20 55. The effective date of this Consent Decree shall be the date
21 upon which this Consent Decree is entered by the Court, except as
22 otherwise provided herein.

23 XXI. RETENTION OF JURISDICTION

24 56. This Court retains jurisdiction over both the subject
25 matter of this Consent Decree and the Parties for the duration of
26 the performance of the terms and provisions of this Consent Decree
27 for the purpose of enabling any of the Parties to apply to the
28 Court at any time for such further order, direction, and relief as
may be necessary or appropriate for the construction or
modification of this Consent Decree, or to effectuate or enforce
compliance with its terms, or to resolve disputes in accordance
with Section XIV (Dispute Resolution) hereof.

XXII. APPENDICES

57. The following appendices are attached to and incorporated into this Consent Decree:

"Appendix A" is the Inner Hylebos Property Summary

"Appendix B" is the Upper Hylebos Property Summary

"Appendix C" is the Taylor Way Property Summary

"Appendix D" is the East-West Road Property Summary

"Appendix E" is the Blair Waterway Property Summary

"Appendix F" is the Blair Backup Property Summary

"Appendix G" is the Implementing Agreement

"Appendix H" is the Memorandum of Agreement

"Appendix I" is the CB/NT Record of Decision

"Appendix J" is the Settlement Agreement.

XXIII. MODIFICATION

58. Schedules specified in this Consent Decree for completion of actions may be modified by agreement of EPA, the Tribe, and the Port. Appendices A through F of this Consent Decree may be modified by agreement of EPA, the Tribe, and the Port. The Tribe shall provide notice of any such proposed modification to the Bureau of Indian Affairs. All such modifications shall be made in writing, and no oral modification shall be effective.

59. Except for Paragraph 58, no modifications shall be made to the Consent Decree without written notification to and written approval of the United States, the Tribe, the Port, and the Court.

60. Nothing in this Decree shall be deemed to alter the Court's power to enforce, supervise or approve modifications to this Consent Decree.

1 XXIV. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

2 61. This Consent Decree shall be lodged with the Court for a
3 period of not less than thirty (30) days for public notice and
4 comment in accordance with Section 122(d)(2) of CERCLA, 42 U.S.C.
5 § 9622(d)(2), and 28 C.F.R. § 50.7. The United States reserves the
6 right to withdraw or withhold its consent if the comments regarding
7 the Consent Decree disclose facts or considerations which indicate
8 that the Consent Decree is inappropriate, improper, or inadequate.
9 The Tribe and the Port consent to the entry of this Consent Decree
10 without further notice.

11 62. If for any reason the Court should decline to approve this
12 Consent Decree in the form presented, this agreement is voidable at
13 the sole discretion of any party and the terms of the agreement may
14 not be used as evidence in any litigation between the Parties.

15 XXV. SIGNATORIES/SERVICE

16 63. Each undersigned representative of the Puyallup Tribe of
17 Indians, the Port of Tacoma, and the Assistant Attorney General for
18 Environment and Natural Resources of the Department of Justice
19 certifies that he or she is fully authorized to enter into the
20 terms and conditions of this Consent Decree and to execute and
21 legally bind such party to this document.

22 64. The Puyallup Tribe of Indians and the Port of Tacoma hereby
23 agree not to oppose entry of this Consent Decree by this Court or
24 to challenge any provision of this Consent Decree unless the United
25 States has notified the Parties in writing that it no longer
26 supports entry of the Consent Decree.

1 65. The Port of Tacoma and the Puyallup Tribe of Indians shall
2 identify, on the attached signature page, the name, address and
3 telephone number of an agent who is authorized to accept service of
4 process by mail on behalf of that party with respect to all matters
5 arising under or relating to this Consent Decree. The Port of
6 Tacoma and the Puyallup Tribe of Indians hereby agree to accept
7 service in that manner and to waive the formal service requirements
8 set forth in Rule 4 of the Federal Rules of Civil Procedure and any
9 applicable local rules of this Court, including, but not limited
10 to, service of a summons.

11 SO ORDERED THIS

12 19th DAY OF Jan, 1995
13 Robert F. Bryan
14 United States District Judge
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1 THE UNDERSIGNED PARTIES enter into this Consent Decree in the
2 matter of United States v. Port of Tacoma, relating
3 to the Puyallup Land Claims Settlement.
4

5 FOR THE UNITED STATES OF AMERICA

6
7 Date: 11/13/99

Lois J. Schiffer
8 Lois J. Schiffer
9 Assistant Attorney General
10 Environment and Natural Resources
11 Division
12 U.S. Department of Justice
13 Washington, D.C. 20530

Kalyn Cherie Free
12 Kalyn Cherie Free
13 Environmental Enforcement Section
14 Environment and Natural Resources
15 Division
16 U.S. Department of Justice
17 Washington, D.C. 20530

Chuck Clarke
18 Chuck Clarke
19 Regional Administrator, Region 10
20 U.S. Environmental Protection
21 Agency
22 1200 Sixth Avenue
23 Seattle, Washington 98101

Richard G. McAllister
23 Richard G. McAllister
24 Assistant Regional Counsel
25 U.S. Environmental Protection
26 Agency
27 Region 10
28 1200 Sixth Avenue
Seattle, Washington 98101

1 THE UNDERSIGNED PARTY enters into this Consent Decree in the
2 matter of the United States v. Port of Tacoma, relating to the
3 Puyallup Land Claims Settlement.

4
5 FOR THE PUYALLUP TRIBE OF INDIANS

6
7 Date: 4-13-94

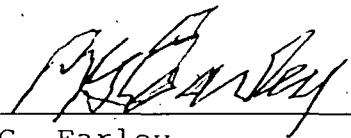
Roberta M. Young

1 THE UNDERSIGNED PARTY enters into this Consent Decree in the
2 matter of United States v. Port of Tacoma, relating
3 to the Puyallup Land Claims Settlement.
4

5 FOR THE PORT OF TACOMA

*/

6
7 Date: May 19, 1994


8 R. G. Earley
9 President
10 Port of Tacoma
11 P.O. Box 1837
12 Tacoma WA 98401

13 Agent Authorized to Accept Service on Behalf of Above-signed
14 Party:

15 Name: Robert I. Goodstein
16 Title: Port Attorney
17 Address: P.O. Box 1837, Tacoma WA 98401
18 Tel. Number: 206-383-9470
19
20
21
22
23
24
25
26
27
28

RECEIVED
MAY 23 1994

1 THE UNDERSIGNED PARTIES enter into this Consent Decree in the
2 matter of United States v. Port of Tacoma, relating to the
3 Puyallup Land Claims Settlement.

4 FOR THE UNITED STATES OF AMERICA

5 Date: _____

6 Steven A. Herman
7 Assistant Administrator
8 Office of Enforcement and
9 Compliance Assurance
10 U.S. EPA (MS-2211)
11 401 M. Street SW
12 Washington, D.C. 20460
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

Appendix C
Taylor Way Property Summary

1. Background. The Taylor Way Property is located in the vicinity of the intersection of Taylor Way and East-West Road in Tacoma, Washington. The triangular-shaped property is about 6 acres in size and is relatively flat.

2. Documents. The following reports pertain to the Taylor Way Property:

a. Phase I Environmental Audit, Taylor Way Properties, Tacoma, Washington. Prepared by Hart Crowser for the Port of Tacoma, dated July 12, 1989.

b. Final Work Plan for the Phase II Environmental Audit for the Blair Backup and Taylor Way Properties. Prepared by Hart Crowser for the Port of Tacoma, dated December 4, 1989. Work Plan Addendum for the Supplemental Phase II Site Investigation at the Blair Backup and East-West Road Properties. Prepared by Hart Crowser for the Port of Tacoma, dated July 27, 1990. Work Plan Addendum for Groundwater Background and Formaldehyde Sampling, Blair Backup, East-West Road, and Taylor Way Properties. Prepared by Hart Crowser for the Port of Tacoma, dated January 4, 1991.

c. Final Investigation Report, Taylor Way Property, Port of Tacoma, Washington. Prepared by Hart Crowser for the Port of Tacoma, dated October 15, 1991.

3. Environmental Investigations. Based on the investigation results presented in the Final Investigation Report, the EPA, Washington Department of Ecology (Ecology), and the Puyallup Tribe of Indians (Tribe) agree that no cleanup actions are required at the property. The Final Investigation Report supports these conclusions with a comparison of groundwater, surface water, soil, and freshwater ditch sediment data to applicable federal and state environmental requirements and criteria that indicate no cleanup actions are required on the property.

4. Institutional Controls. The EPA, Ecology, and Tribe agree with the Port of Tacoma's recommendation that no further cleanup is required at the property, with the condition that the following institutional controls be implemented:

a. Subject to Paragraph C12f of the Settlement Agreement Technical Document 1, future use of the Taylor Way Property will be for commercial and industrial purposes.

b. The use of shallow groundwater (estimated to be 0 to 35 feet below ground surface) for drinking water purposes is prohibited.

5. Notice Requirements of the Consent Decree. Requirements related to notice of a release or threat of a release of a hazardous substance on a Settlement Property, including a release or threat of release involving Historic Contamination, are set forth in Paragraph 11 of the Consent Decree. Requirements related to notice of use or physical activity on a Settlement Property are set forth in Paragraph 12 of the Consent Decree.

Appendix D
East-West Road Property Summary

1. Background. The East-West Road Property is located in the vicinity of the intersection of East-West Road and Taylor Way in Tacoma, Washington. The triangular-shaped property is about 1.8 acres in size and is relatively flat.

2. Documents. The following reports pertain to the East-West Road Property:

a. Phase I Environmental Audit, Taylor Way Properties, Tacoma, Washington. Prepared by Hart Crowser for the Port of Tacoma, dated July 12, 1989.

b. Final Work Plan for the Phase II Environmental Audit for the Blair Backup and Taylor Way Properties. Prepared by Hart Crowser for the Port of Tacoma, dated December 4, 1989. Work Plan Addendum for the Supplemental Phase II Site Investigation at the Blair Backup and East-West Road Properties. Prepared by Hart Crowser for the Port of Tacoma, dated July 27, 1990. Work Plan Addendum for Groundwater Background and Formaldehyde Sampling, Blair Backup, East-West Road, and Taylor Way Properties. Prepared by Hart Crowser for the Port of Tacoma, dated January 4, 1991.

c. Final Investigation Report, East-West Road Property, Port of Tacoma, Washington. Prepared by Hart Crowser for the Port of Tacoma, dated August 27, 1991.

3. Environmental Investigations. Based on the investigation results presented in the Final Investigation Report, the EPA, Washington Department of Ecology (Ecology), and Tribe agree that no cleanup action is required for upland soils at the property. The Final Investigation Report supports these conclusions with a comparison of soil data to applicable federal and state environmental requirements and criteria that indicate no cleanup action is required.

The EPA, Ecology, and Tribe agree with the Port of Tacoma's (the Port) recommendation that active groundwater remediation by the Port at the property is not required at this time, although chemical concentrations in groundwater exceed state and federal standards. Groundwater contaminants include chlorinated volatile organic compounds, such as vinyl chloride; cis-1,2-dichloroethene; trans-1,2-dichloroethene; and trichloroethene. Results of the Final Investigation Report indicate that the "Bonneville Power Administration Occidental Sludge Site", a property adjacent to the East-West Road Property, is the source of the chlorinated volatile organic compounds to groundwater at

the East-West Road Property.

4. Institutional Controls. Based on results of the Final Investigation Report, which included an evaluation of the potential adverse human health exposures to contaminated groundwater, the EPA, Ecology, and Tribe agree with the Port's recommendation that no cleanup action by the Port is required at the East-West Road Property, with the condition that the following institutional controls be implemented:

a. Subject to Paragraph C12f of the Settlement Agreement Technical Document 1, future use of the East-West Road Property will be for commercial and industrial purposes.

b. The use of groundwater at the property for any purpose is prohibited to avoid potential exposure resulting from contact with or ingestion of contaminated groundwater.

c. Institutional controls shall minimize the potential for future exposure to contaminated groundwater at the East-West Road Property (see Port's letter to EPA dated November 2, 1991; see Section 7 of Final Investigation Report):

(1) To protect against inhalation of volatile organic compounds by future onsite workers, the Tribe or a Party in Privity with the Tribe will provide an integrally designed soil gas protection system (e.g., vapor barrier, venting, gravel drains, or other appropriate measures) if structures with gas-permeable (e.g., wood) floors are built prior to groundwater cleanup; or, the Port will be required to evaluate development or construction activities at the East-West Road Property for which the Tribe gives notice, subject to the Implementing Agreement, to the Port to ensure that such activities, including but not limited to building structures, are designed to protect inhalation of volatile organic compounds by future onsite workers. The Tribe or a Party in Privity with the Tribe shall incorporate practicable construction and design requirements in its development plans to comply with the Institutional Controls and restrictions set forth in this Appendix. The Tribe shall notify EPA within 5 calendar days of the Tribe's determination that proposed activities may result in adverse exposure of individuals to inhalation of volatile organic compounds from contaminated groundwater at the East-West Road Property. The notification to EPA shall describe the impacts of the proposed activity, and describe necessary response actions in order for the planned activity of the Tribe or a Party in Privity with the Tribe to proceed in a manner that is protective of human health, welfare, and the environment.

(a) The Port and Tribe and Parties in Privity with the Tribe agree that any proposed activity that may result in an adverse exposure of individuals to inhalation of

volatile organic compounds from contaminated groundwater at the East-West Road Property must be reviewed and approved by EPA prior to the conduct of work.

(b) Ensure future onsite workers observe health and safety precautions as appropriate for worker protection during ground-intrusive development or construction activities.

(c) During development or construction activities at the East-West Road Property, ensure groundwater disposal planning is performed with regard to potential dewatering activities during construction. Any contaminated materials handled or disposed of shall be handled and disposed in accordance with applicable federal, state, and tribal laws and regulations.

5. Notice Requirements of the Consent Decree. Requirements related to notice of a release or threat of a release of a hazardous substance on a Settlement Property, including a release or threat of release involving Historic Contamination, are set forth in Paragraph 11 of the Consent Decree. Requirements related to notice of use or physical activity on a Settlement Property are set forth in Paragraph 12 of the Consent Decree.

Appendix E
Blair Waterway Property Summary

1. Background. The Blair Waterway Property is located along the northeastern shore of the Blair Waterway in Tacoma, Washington. The property is about 43.4 acres in size, including about 8 acres of intertidal and subtidal marine sediments. The Blair Waterway, which is parallel to this property, is not designated as a "problem area" waterway within the Commencement Bay Nearshore/Tideflats Superfund site.

2. Documents. The following reports pertain to the Blair Waterway Property:

a. Phase I Environmental Investigation Report.
Prepared by Landau Associates for the Port of Tacoma, Dated July 11, 1989.

b. Work Plan for Phase II Environmental Investigations at the Port of Tacoma Property Transfers: Blair Waterway Property, Inner Hylebos Property, and Upper Hylebos Property.
Prepared by Landau Associates for the Port of Tacoma, dated December 4, 1989.

c. Final Investigation Report for the Blair Waterway Property. Prepared by Landau Associates for the Port of Tacoma, dated February 24, 1992 (amended April 14, 1992). Data are presented in "Appendix D, Volumes I and II, Data Quality Assurance, Final Investigation Report for Blair Waterway, Inner Hylebos, and Upper Hylebos Properties, Tacoma, Washington, January 15, 1991 (amended July 5, 1991)", which is bound separately from the Final Investigation Report.

d. Supplemental Investigation and Sampling Plan, Blair Waterway Property. Prepared by Landau Associates for the Port of Tacoma, dated March 12, 1992.

e. Data Report, Supplemental Investigation, Blair Waterway Property, Tacoma, Washington. Prepared by Landau Associates for the Port of Tacoma, dated April 22, 1992.

f. Analysis of Alternatives, Blair Waterway Property, Tacoma, Washington. Prepared by Landau Associates for the Port of Tacoma, dated August 14, 1992 (amended November 18, 1992).

g. Cleanup Plan, Blair Waterway Property, Tacoma, Washington. Prepared by Landau Associates for the Port of Tacoma, dated February 19, 1993.

h. Blair Waterway Property Completion Report, Port of

Tacoma, Tacoma, Washington. Prepared by Landau Associates for the Port of Tacoma, dated March 30, 1994. Lincoln Avenue Ditch Addendum to the Blair Waterway Completion Report, dated March 31, 1994. Mud Lake Addendum to the Blair Waterway Completion Report, dated (scheduled to be submitted to EPA May 16, 1994).

i. Technical Memorandum on Baseline Conditions for the Lincoln Ditch Mitigation Plan. Prepared by FishPro, Inc. for Puyallup International, Inc., Tacoma, Washington, dated April 14, 1993.

j. Lincoln Ditch 404(b)(1) Alternatives Analysis. Prepared by FishPro, Inc. for Puyallup International, Inc., Tacoma, Washington, dated May 21, 1993.

k. Lincoln Ditch Mitigation Plan. Prepared by FishPro, Inc. for Puyallup International, Inc., Tacoma, Washington, dated June 18, 1993, including revisions dated July 8, 1993; July 21, 1993; and August 19, 1993.

l. Commencement Bay Nearshore/Tideflats Remedial Investigation. Prepared by Tetra Tech for EPA, dated August, 1985.

m. Commencement Bay Nearshore/Tideflats Feasibility Study. Prepared by Tetra Tech for EPA, dated December, 1988.

n. Commencement Bay Nearshore/Tideflats Record of Decision. EPA, dated September 30, 1989.

3. Upland Environmental Investigations and Cleanup. Based on the results presented in the Final and Supplemental Investigation Reports, the EPA, Washington Department of Ecology (Ecology), and the Puyallup Tribe of Indians (Tribe) agreed that cleanup actions were required on the upland portion of the property. The Investigation Reports support these conclusions with a comparison of groundwater, soil, and freshwater and marine ditch sediment data to applicable federal and state environmental requirements and criteria, and an evaluation of the potential adverse human health exposures (i.e., a human health risk assessment). The EPA, Ecology, and Tribe reviewed and approved an Analysis of Alternatives Report, which was made available for public review and comment from November 23, 1992 to December 23, 1992. Subsequently, the EPA, Ecology, and Tribe reviewed and approved a Cleanup Plan for the Blair Waterway Property. The Cleanup Plan was implemented pursuant to an administrative order issued by the EPA to the Port of Tacoma (the Port) on March 9, 1993 (U.S. EPA Docket No. 1093-03-05-106), and pursuant to Amendment 1 to that order, dated November 3, 1993. A Completion Report for the Blair Waterway Cleanup Plan was approved by the Tribe on January 20, 1994 and by EPA on April 12, 1994. The Lincoln Avenue Ditch Addendum to the Completion Report was

approved by the Tribe on March 9, 1994, and by EPA on April 12, 1994. The following cleanup actions were completed:

a. Removed approximately 50 cubic yards of arsenic-contaminated soil/sediment lining the northeastern portion of the southeastern boundary ditch on the Blair Waterway Property and disposed of the material under an asphalt cap at the Blair Backup Property (see Appendix F of this Consent Decree).

b. Placed approximately 50 cubic yards of arsenic-contaminated soil/sediment from the small segment of the Lincoln Avenue Ditch as fill in the large segment of the Lincoln Avenue Ditch, prior to remediation of the large segment of the Lincoln Avenue Ditch.

c. Contained contaminated sediments in the large segment of the Lincoln Avenue Ditch by filling the ditch with clean fill material, in compliance with the Clean Water Act 404(b)(1) Guidelines, 40 CFR Part 230. The filling of 0.80 acres of the Lincoln Avenue Ditch filled in 1993 will be mitigated off-site and in-kind in accordance with the approved Lincoln Ditch Mitigation Plan.

d. Removed approximately 16,450 cubic yards of slag/soil from the near-surface area in the central portion of the Blair Waterway Property and from along three of four sides of the graving dock, and disposed of the material under an asphalt cap at the Blair Backup Property (see Appendix F of this Consent Decree).

e. Removed approximately 37,000 cubic yards of dredged sediment material temporarily stored in "Mud Lake" on the Blair Waterway Property under a separate enforcement order from EPA to the Port (U.S. EPA Docket No. C93-5462B).

The following cleanup action is ongoing:

f. Organic chemical contamination of groundwater at the Blair Waterway Property originating from Reichhold Chemicals, Inc. will be cleaned up under a Resource, Conservation and Recovery Act (RCRA) Corrective Action Permit WAD 009-252-891 issued by EPA. Reichhold has installed groundwater monitoring and extraction wells in the southeastern portion of the Blair Waterway Property to remediate contaminated groundwater.

4. Upland Institutional Controls. The EPA, Ecology, and Tribe agree with the Port's recommendation that no further cleanup actions are required at the upland portion of the property, with the condition that the following institutional controls be implemented:

a. Subject to Addendum No. 5 (February 16, 1993) of

the Port/Tribe Implementing Agreement and to requirements set forth in the Final Investigation Report, future use of the Blair Waterway Property will be for industrial purposes.

b. The use of shallow groundwater (estimated to be 0 to 35 feet below ground surface) at the property for drinking water purposes is prohibited.

c. The EPA, Ecology, and Tribe agree with the Port's recommendation that no cleanup is necessary to address low concentrations of polychlorinated biphenyls (PCBs) and arsenic that were found in the buried sediment of the former Lincoln Avenue Ditch, which is generally shown on Figure E-1, with the following precautions (see Section 8.1 in the Cleanup Plan):

(1) A conditional point of compliance in soils is established at 12 feet Mean Lower Low Water (MLLW) (about 3-5 feet below ground surface) in the former Lincoln Avenue Ditch area, which encompasses the area shown on Figure 2 of the Institutional Controls Addendum, dated May 5, 1994, to the Blair Waterway Property Completion Report (reproduced herein as Figure E-2). The elevation of 12 feet MLLW corresponds to the Mean Higher High Water elevation, which is the level that is rarely exceeded by high tides; therefore, sediment could not be deposited above this elevation. This conditional point of compliance is also considered protective because existing data collected from the former Lincoln Avenue Ditch only found contaminated sediments at a depth of 12-13 feet below ground surface. Material containing chemical concentrations greater than 10 ppm PCBs (maximum detected value = 14.6 ppm) and greater than 200 ppm arsenic (maximum detected value = 291 ppm) may remain at depths below 12 feet MLLW. The 10 ppm PCBs and 200 ppm arsenic concentrations are the industrial soil cleanup levels set forth in the State of Washington's Model Toxics Control Act regulations. The conditional point of compliance in the former Lincoln Avenue Ditch area has been surveyed and is detailed in Figure 2 of the Institutional Controls Addendum, dated May 5, 1994, to the Blair Waterway Property Completion Report (reproduced herein as Figure E-2).

(2) Any activity within the former Lincoln Avenue Ditch area that may result in the uncontrolled release of soil containing contaminant concentrations in excess of applicable regulatory levels is prohibited.

(3) For any subsurface intrusive activity taken by the Tribe or a Party in Privity with the Tribe within the former Lincoln Avenue Ditch area below a depth of 12 feet MLLW, the Tribe shall provide timely written notice to the Port in accordance with the Implementing Agreement. The Tribe or a Party in Privity with the Tribe shall incorporate practicable construction and design requirements in its development plans to

avoid and minimize the disturbance of Historic Contamination and to comply with the Institutional Controls and restrictions set forth in this Appendix. Within 5 calendar days of the Tribe's determination that subsurface intrusive activities will be undertaken in the former Lincoln Avenue Ditch area, the Port and the Tribe shall notify EPA in writing. The notification to EPA shall describe the impacts of the proposed activity, and describe necessary response actions in order for the planned activity of the Tribe or a Party in Privity with the Tribe to proceed in a manner that is protective of human health, welfare, and the environment.

(a) The Port and Tribe and Parties in Privity with the Tribe agree that any proposed activities that occur in the former Lincoln Avenue Ditch area below a depth of 12 feet MLLW must be reviewed and approved by EPA prior to the conduct of work. Prior to the conduct of any work below a depth of 12 feet MLLW within the former Lincoln Avenue Ditch area, a Work Plan will be submitted to EPA for approval.

(b) Workers involved in development or construction activities within the former Lincoln Avenue Ditch area below a depth of 12 feet MLLW including, but not limited to, grading, foundation construction, placement of utilities, and building construction shall observe health and safety procedures as appropriate during construction to minimize dust inhalation and dermal contact with the soil containing residual contaminant concentrations in excess of applicable regulatory levels.

(c) Soil and water generated by the Port or the Tribe during development or construction activities within the former Lincoln Avenue Ditch area below a depth of 12 feet MLLW will be tested to identify whether materials are contaminated. Any contaminated materials handled or disposed of shall be handled and disposed in accordance with applicable federal, state, and tribal laws and regulations.

d. The EPA, Ecology, and Tribe agree with the Port's recommendation that no further cleanup is necessary to address residual contamination in soils contained within the Lincoln Avenue Ditch that was filled in 1993, which is generally shown on Figure E-1, with the following precautions (additional information provided in Section 8.1 in the Cleanup Plan):

(1) A conditional point of compliance in soils is established at 12 feet Mean Lower Low Water (MLLW) (about 3-5 feet below ground surface) in the Lincoln Avenue Ditch area that was filled in 1993, which encompasses the area shown on Figure 2 of the Institutional Controls Addendum, dated May 5, 1994, to the Blair Waterway Property Completion Report (reproduced herein as Figure E-2). The elevation of 12 feet MLLW corresponds to the Mean Higher High Water elevation, which is the level that is

rarely exceeded by high tides; therefore, sediment could not be deposited above this elevation. Material containing chemical concentrations greater than 200 ppm arsenic (maximum detected value = 288 ppm) may remain at depths below 12 feet MLLW. The 200 ppm arsenic concentration is the industrial soil cleanup level set forth in the State of Washington's Model Toxics Control Act regulations.

(2) Any activity within the area of the Lincoln Avenue Ditch that was filled in 1993 that may result in the uncontrolled release of soil containing contaminant concentrations in excess of applicable regulatory levels is prohibited.

(3) For any subsurface intrusive activity taken by the Tribe or a Party in Privity with the Tribe within the area of the Lincoln Avenue Ditch that was filled in 1993 below a depth of 12 feet MLLW, the Tribe shall provide timely written notice to the Port in accordance with the Implementing Agreement. The Tribe or a Party in Privity with the Tribe shall incorporate practicable construction and design requirements in its development plans to avoid and minimize the disturbance of Historic Contamination and to comply with the Institutional Controls and restrictions set forth in this Appendix. Within 5 calendar days of the Tribe's determination that subsurface intrusive activities will be undertaken in the area of the Lincoln Avenue Ditch that was filled in 1993, the Port and the Tribe shall notify EPA in writing. The notification to EPA shall describe the impacts of the proposed activity, and describe necessary response actions in order for the planned activity of the Tribe or a Party in Privity with the Tribe to proceed in a manner that is protective of human health, welfare, and the environment.

(a) The Port and Tribe and Parties in Privity with the Tribe agree that any proposed subsurface intrusive activities that occur in the former Lincoln Avenue Ditch area must be reviewed and approved by EPA prior to the conduct of work. Prior to the conduct of any work below a depth of 12 feet MLLW within the former Lincoln Avenue Ditch area, a Work Plan will be submitted to EPA for approval.

(b) Workers involved in development or construction activities within the area of the Lincoln Avenue Ditch that was filled in 1993 below a depth of 12 feet MLLW including, but not limited to, grading, foundation construction, placement of utilities, and building construction shall observe health and safety procedures as appropriate during construction to minimize dust inhalation and dermal contact with the soil containing residual contaminant concentrations in excess of applicable regulatory levels.

(c) Soil and water generated by the Port or the Tribe during development or construction activities within the area of the Lincoln Avenue Ditch filled in 1993 below a depth of 12 feet MLLW will be tested to identify whether materials are contaminated. Any contaminated materials handled or disposed of shall be handled and disposed in accordance with applicable federal, state, and tribal laws and regulations. The Port agrees to submit a Work Plan for approval by EPA prior to its conduct of any work below a depth of 12 feet MLLW within the Lincoln Avenue Ditch area.

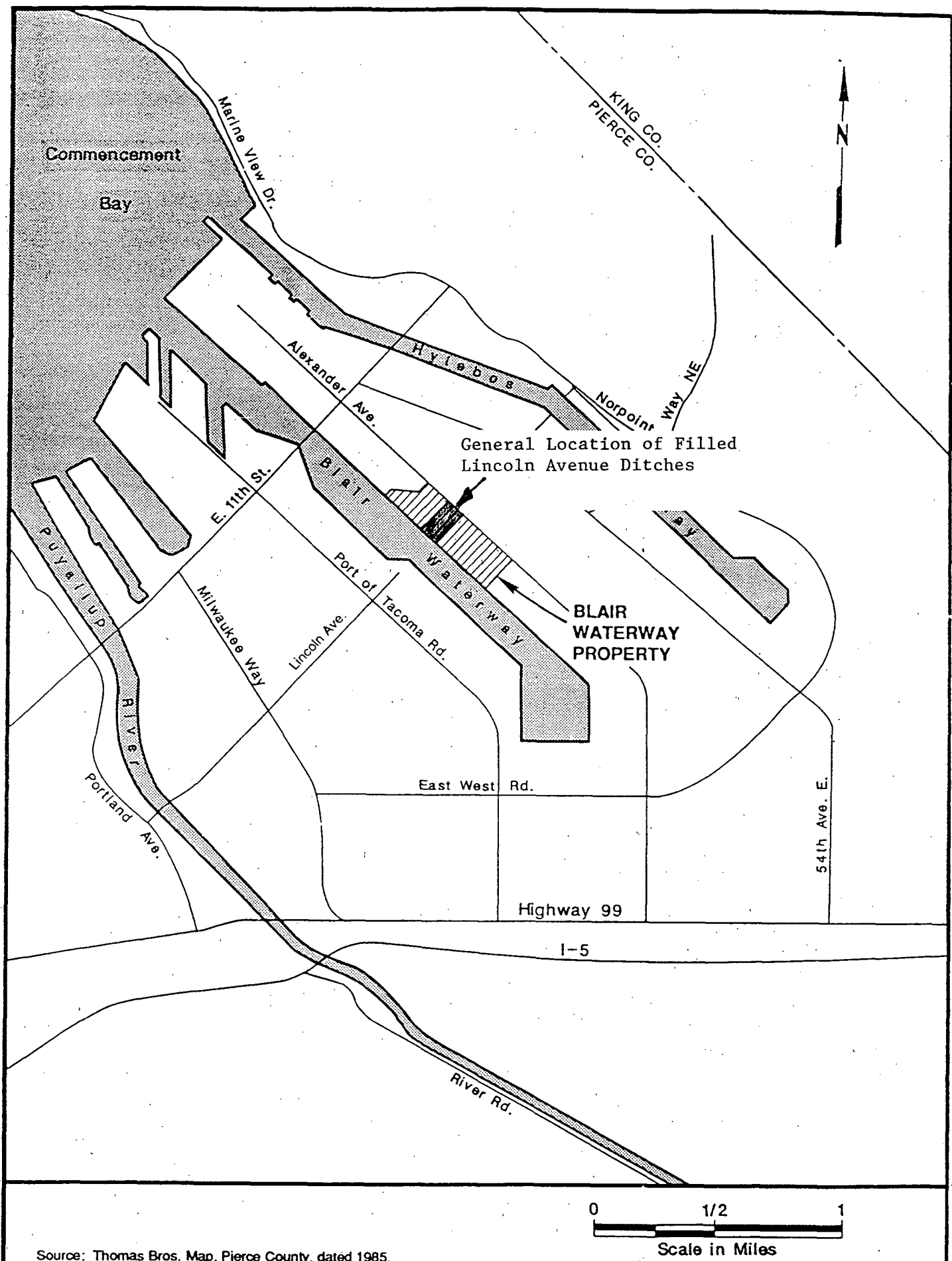
e. Unless EPA agrees otherwise, the use of any groundwater in the area impacted by Reichhold's contaminated groundwater plume at the Blair Waterway Property for any purpose is prohibited.

5. Implementation of the Lincoln Ditch Mitigation Plan. Subject to Addendum No. 5 (February 16, 1993) of the Port/Tribe Implementing Agreement, the Tribe agrees to create, implement, and oversee the Lincoln Ditch Mitigation Plan, including implementation of the monitoring program and contingency plan, at the Outer Hylebos Mitigation Site. Implementation of the mitigation plan, including planting at the Outer Hylebos Property, is required by January 1995, which is one year after the filling of the large segment of the Lincoln Avenue Ditch.

6. Marine Sediment. As part of the Port's obligations under the Settlement Agreement, the Port will dredge certain intertidal and subtidal marine sediments associated with the Blair Waterway Property, and will dispose of the sediments in accordance with state and federal law. This activity is not covered under this Consent Decree.

7. Notice Requirements of the Consent Decree. Requirements related to notice of a release or threat of a release of a hazardous substance on a Settlement Property, including a release or threat of release involving Historic Contamination, are set forth in Paragraph 11 of the Consent Decree. Requirements related to notice of use or physical activity on a Settlement Property are set forth in Paragraph 12 of the Consent Decree.

Base Reproduced From:
118.03.43 Port of Tacoma/Blair Waterway Property/Final Investigation Report 2/92, Figure 1



Source: Thomas Bros. Map, Pierce County, dated 1985.

LANDAU ASSOCIATES, INC.

Blair Waterway Property Vicinity Map

Appendix F
Blair Backup Property Summary

1. Background. The Blair Backup Property is about 85 acres in area and is located between Taylor Way and Alexander Avenue in Tacoma, Washington. With the exception of buildings along Taylor Way, the property is undeveloped.

2. Documents. The following reports pertain to the Blair Backup Property:

a. Phase I Environmental Audit for the Blair Backup Property, Tacoma, Washington. Prepared by Hart Crowser for the Port of Tacoma, dated July 12, 1989.

b. Final Work Plan for the Phase II Environmental Audit for the Blair Backup and Taylor Way Properties. Prepared by Hart Crowser for the Port of Tacoma, dated December 4, 1989.

c. Report of Underground Storage Tank removal, Taylor Way Property (removal actually occurred at Blair Backup Property), Tacoma, Washington. Prepared by GeoEngineers for the Port of Tacoma, dated March 15, 1990.

d. Final Work Plan Addendum for the Supplemental Phase II Site Investigation at the Blair Backup and East-West Road Properties. Prepared by Hart Crowser for the Port of Tacoma, dated July 27, 1990.

e. EPA Memorandum Summarizing Activities related to Removal of PAH-Contaminated Soils by Kaiser Aluminum and Chemical Corporation from a portion of the Blair Backup Property. Prepared by Karen Keeley, EPA Superfund Branch, dated October 17, 1990.

f. Final Work Plan Addendum for Groundwater Background and Formaldehyde Sampling, Blair Backup, East-West Road, and Taylor Way Properties. Prepared by Hart Crowser for the Port of Tacoma, dated January 4, 1991.

g. Summary Document and Final Drawings for Removal of Contaminated Soils from Solid Waste Management Unit 49 at the Blair Backup Property. Submitted to EPA RCRA Branch by Reichhold Chemicals, Inc., dated February 28, 1991.

h. Final Investigation Report, Blair Backup Property, Port of Tacoma, Washington. Prepared by Hart Crowser for the Port of Tacoma, dated January 29, 1992. Volume I and Volume II.

i. Nuisance Materials Status Report, Sandblast

Grit/Visibly Stained Soil Removal, Blair Backup Property, Port of Tacoma, Washington. Prepared by Hart Crowser for the Port of Tacoma, dated April 7, 1992.

j. Work Plan Addendum Supplemental Site Assessment, Blair Backup Property, Port of Tacoma, Washington. Prepared by Hart Crowser for the Port of Tacoma, dated April 9, 1992.

k. Analysis of Alternatives, Blair Backup Property, Port of Tacoma, Tacoma, Washington. Prepared by Hart Crowser for Port of Tacoma, dated November 19, 1992. Volume I (Text) and Volume II (Laboratory Certificates of Analysis).

l. Port of Tacoma Petition for Exemption of Charcoal Briquettes and Associated Charcoal-Contaminated Soils from Washington Dangerous Waste Regulations, Chapter 173-303 WAC, Blair Backup Property, Port of Tacoma, Washington. Prepared by Hart Crowser for Port of Tacoma, dated December 16, 1992. Volume I (Text) and Volume II (Laboratory Certificates; dated October 14, 1992).

m. Final Cleanup Plan, OFA/Pennwalt Area, Blair Backup Property, Port of Tacoma, WA. Prepared by Hart Crowser for the Port of Tacoma, dated February 17, 1993. The Cleanup Plan was modified by the memorandum "Errata to the February 17, 1993 Final Cleanup Plan, Blair Backup Property", dated February 26, 1993.

n. Completion Report, OFA/Pennwalt Area, Blair Backup Property, Port of Tacoma, Washington. Prepared by Hart Crowser for the Port of Tacoma, dated January 21, 1994.

3. Upland Environmental Investigations and Cleanup. Based on the results presented in the Final Investigation Report, the EPA, Washington Department of Ecology (Ecology), and the Puyallup Tribe of Indians (Tribe) agreed that cleanup actions were required at the property. The Investigation Report supports these conclusions with a comparison of groundwater, soil, and freshwater ditch sediment data to applicable federal and state environmental requirements and criteria, and an evaluation of the potential adverse human health exposures (i.e., human health risk assessment). The EPA, Ecology, and Tribe reviewed and approved an Analysis of Alternatives Report, which was made available for public review and comment from November 23, 1992 to December 23, 1992. Subsequently, the EPA, Ecology, and Tribe reviewed and approved a Cleanup Plan for the Blair Backup Property. The Cleanup Plan was implemented pursuant to an administrative order issued by the EPA to the Port of Tacoma (the Port) on March 9, 1993 (U.S. EPA Docket No. 1093-03-05-106). A Completion Report for the Blair Backup Cleanup Plan was approved by the Tribe on January 20, 1994, and by EPA on February 9, 1994. The following cleanup actions were completed:

a. Removed approximately 765 cubic yards of sandblast grit from several locations at the Blair Backup Property and disposed of the material under an asphalt cap in the OFA/Pennwalt Area at the Blair Backup Property.

b. Removed approximately 4,264 cubic yards of charcoal briquettes and associated soils contaminated with Polycyclic Aromatic Hydrocarbons (PAH) and disposed of material at a secured landfill in Klickitat County, WA, in accordance with a Washington State Dangerous Waste Exemption.

c. In a 7-acre portion of the Blair Backup Property, consolidated under an asphalt concrete cap the ditch sediments and slag/soil from the Blair Waterway Property and the sandblast grit from the Blair Backup Property. In this 7-acre portion of the property, the material from the Blair Waterway Property was overlain on top of chromium slag/soil and PAH-contaminated soils that were originally located on the Blair Backup Property. In 10 acres surrounding the 7-acre capped portion of the property, a 2-foot sand and gravel cover was placed over the remaining chromium slag/soil and PAH-contaminated soils at the Blair Backup Property. In total, the 10-acre sand and gravel cover and the 7-acre asphalt cap cover approximately 80,000 cubic yards of chromium slag/soil and approximately 8,000 cubic yards of PAH-contaminated soils.

The following cleanup action is ongoing:

d. Organic chemical contamination of groundwater at the Blair Backup Property originating from Reichhold Chemicals, Inc. will be cleaned up under a Resource, Conservation and Recovery Act (RCRA) Corrective Action Permit WAD 009-252-891 issued by EPA. Reichhold has installed groundwater monitoring wells in the "Alexander Strip Area" of the Blair Backup Property, as described in the Final Investigation Report for the Blair Backup Property.

4. Upland Institutional Controls. The EPA, Ecology, and Tribe agree with the Port's cleanup actions, with the condition that the following institutional controls be implemented:

a. Subject to Addendum No. 6 (February 16, 1993) to the Port/Tribe Implementing Agreement and to requirements set forth in the Final Investigation Report, future use of the Blair Backup Property will be for industrial purposes.

b. The use of shallow groundwater (estimated to be 0 to 35 feet below ground surface) at the property for drinking water purposes is prohibited.

c. Any activity within the capped or covered area of the Blair Backup Property that may result in the uncontrolled

release of soil/slag containing contaminant concentrations in excess of applicable regulatory levels is prohibited. The general location of the capped and covered area of the Blair Backup Property is shown in Figure F-1 to this appendix. The surveyed boundaries of the capped and covered area of the Blair Backup Property are shown in the "Areas Boundary Plan", which is included as the fourth as-built sheet in the Completion Report for the OFA/Pennwalt Area of the Blair Backup Property (reproduced herein as Figure F-2).

d. Any activity within the capped or covered area of the Blair Backup Property must be conducted in such a manner as to minimize potential human health exposure to contaminants that remain under the cap or cover by restricting subsurface work and by requiring notification and oversight of any subsurface work that potentially penetrates/damages the cap or cover, and by avoiding compromising the integrity of the cap and cover by restricting construction activities that could compromise the cap or cover and by requiring notification and oversight of any Tribal development on the capped or covered area.

(1) The Tribe shall provide timely written notice in accordance with the Implementing Agreement to the Port of a use or activity that the Tribe or a Party in Privity with the Tribe plans to undertake that might adversely affect the capped or covered area.

(2) The cap and cover are not designed for structural carrying capacity. An additional pavement section or fill thickness is required before any site activities in the capped or covered area is commenced. Site activities over the capped or covered area shall be limited until an appropriate pavement section is constructed. The Tribe or a Party in Privity with the Tribe shall incorporate practicable construction and design requirements in its development plans to avoid and minimize the disturbance of Historic Contamination beneath the cap and cover at the Blair Backup Property and to comply with the Institutional Controls and restrictions set forth in this Appendix. The Port, in consultation with the Tribe, shall review all pavement and foundation designs before site activities commence in either the capped or covered area, and shall evaluate whether the proposed use or activity adversely affects the capped or covered area. The Port shall be notified in writing by the Tribe at least one week prior to any subsurface work onsite which will penetrate and/or damage the cap or cover. Prior to any subsurface work in the vicinity of the asphalt cap, the location of the cap should be confirmed. The Port and the Tribe shall notify EPA in writing within 5 calendar days of their determination on whether the proposed use or activity adversely affects the capped or covered area. The notification to EPA shall describe the impacts of the proposed activity, and describe necessary response actions in order for the planned activity of

the Tribe or a Party in Privity with the Tribe to proceed in a manner that is protective of human health, welfare, and the environment.

(a) The Port and Tribe and Parties in Privity with the Tribe agree that any proposed subsurface intrusive activities that occur in the capped or covered area must be reviewed and approved by EPA prior to the conduct of work. Prior to the conduct of any subsurface work, a Work Plan will be submitted to EPA for approval.

(3) Workers involved in development or construction activities within the capped or covered area including, but not limited to, grading, foundation construction, placement of utilities, and building construction shall observe health and safety procedures as appropriate during construction to minimize dust inhalation and dermal contact with the contaminated material.

(4) Soil and water generated by the Port or the Tribe during development or construction activities within the capped or covered area will be tested to identify whether materials are contaminated. Any contaminated materials handled or disposed of shall be handled and disposed in accordance with applicable federal, state, and tribal laws and regulations.

(5) The future use of shallow groundwater (estimated to be 0 to 35 feet below ground surface) in the capped or covered area of the Blair Backup Property for any purpose is prohibited. Drawdown of the aquifer could induce settlement which could in turn crack the asphalt cap.

e. Unless EPA agrees otherwise, the use of groundwater in the area impacted by Reichhold's contaminated groundwater plume at the Blair Backup Property for any purpose is prohibited.

5. Monitoring Requirements. In accordance with Appendix J of the Completion Report and Appendices A and F of the Cleanup Plan, the Port shall conduct long-term groundwater monitoring in and around the capped or covered area, and long-term operation and maintenance of the sand and gravel cover, asphalt cap, storm water system, and groundwater monitoring system.

6. Notice Requirements of the Consent Decree. Requirements related to notice of a release or threat of a release of a hazardous substance on a Settlement Property, including a release or threat of release involving Historic Contamination, are set forth in Paragraph 11 of the Consent Decree. Requirements related to notice of use or physical activity on a Settlement Property are set forth in Paragraph 12 of the Consent Decree.

This is a detailed topographic map of the Northeast Tacoma area. The map shows various properties and landmarks, including:

- Properties:** Blair Waterway Property, Blair Backup Property, Taylor Way Property, East-West Road Property.
- Waterways:** HYBLEBOS WATERWAY, BLAIR WATERWAY.
- Avenues:** ALEXANDER AVENUE, TAYLOR WAY, MARSHALL, SCORE AVE, FIFE.
- Other Features:** Navy & Mc Reserve Center, Grain Substation, Gravel Pit, Golf Course, Substa, Indian Reservation, Fife, Marshall, Score Ave, Taylor Way, Alexander Avenue, Blair Waterway, Blair Backup Property, Taylor Way Property, East-West Road Property.

The map is oriented with North at the top.

0 2000 4000

Scale in Feet



Figure 1-1



NOTICE

**This target sheet represents an over-sized map.
This material can be requested through the EPA
Region 10 Headquarters, Superfund Branch in Seattle,
Washington**

FINAL

IMPLEMENTING AGREEMENT
between the
PORT OF TACOMA
and the
PUYALLUP TRIBE OF INDIANS

1. Parties and Purpose. This Implementing Agreement between the PORT OF TACOMA ("Port") and the PUYALLUP TRIBE OF INDIANS ("Tribe"), and approved by the Secretary of the Interior pursuant to 25 U.S.C. 81, is made to set forth the manner, and the conditions for the conveyance of the six (6) parcels of land owned by the Port to be conveyed to the United States in trust for the Tribe pursuant to the Puyallup Settlement Agreement ("Settlement Agreement"), the Puyallup Tribe of Indians Settlement Act of 1989 (P.L. 101-41) ("Settlement Act") and the March 24, 1990 Supplemental Agreement between the Port and the Tribe ("Supplemental Agreement"). The effective date of this Implementing Agreement shall be determined in the manner provided by §12 below.

2. Delayed Settlement Properties. The Settlement Agreement requires that title to certain lands owned by the Port be conveyed to the United States in trust for the Tribe by March, 1993. Pursuant to the Supplemental Agreement, the deeds to the following lands have been placed in escrow and are to be conveyed to the Tribe under the Settlement Act, 25 USC §1773b(c). These lands (hereinafter collectively referred to as the "Delayed Settlement Properties") as defined by the Record of Survey include the following:

2.1 The Blair Waterway property, comprised of 43.61 acres;

2.2 The Blair Backup property, comprised of 85.18 acres;

2.3 The Inner Hylebos property, comprised of 72.61 acres;

2.4 The Upper Hylebos property, comprised of 5.86 acres;

2.5 The Taylor Way property, comprised of 5.77 acres;
and

2.6 The East-West Road property, comprised of 1.82 acres.

3. Property Transfer and Addenda. The Supplemental Agreement describes the mechanism for transferring title to the Delayed Settlement Properties from escrow to the United States in trust for the Tribe. This Implementing Agreement addresses a number of matters of mutual interest to the parties under the Settlement Agreement and facilitates the transfer of the Delayed Settlement Properties.

3.1 The Parties intend to prepare and execute an addendum for each of the Delayed Settlement Properties which shall set forth specific conditions applicable to the transfer of that specific Delayed Settlement Property.

3.2 This Implementing Agreement shall only be applicable to those Delayed Settlement Properties which are also subject to a specific addendum.

3.3 Each such addendum shall be an amendment to this Implementing Agreement as provided by Section 14.1 below. Except as explicitly modified in this Implementing Agreement, the terms of the Settlement Agreement and the Supplemental Agreement shall remain in full force and effect.

4. Responsibility for Historic Contamination. Notwithstanding the Port's transfer of Delayed Settlement Properties to the United States in trust for the Tribe, and in accordance with the Settlement Agreement and Technical Documents incorporated therein, the Port shall continue to remain responsible for the cleanup and/or remediation of any contamination including all known or subsequently discovered contamination that remains on, in, under or about any of the Delayed Settlement Properties as of the date that title to such Delayed Settlement Property is conveyed to the United States in trust for the Tribe ("Historic Contamination").

4.1 Monitoring. The Port shall be responsible for all monitoring, testing or other ongoing or future requirements regarding Historic Contamination on, in, under or about a Delayed Settlement Property that either have been or may be in the future imposed by the United States Environmental Protection Agency ("EPA") by means of Administrative Order, Consent Decree or other means. All such requirements imposed by EPA are hereby incorporated into this Implementing Agreement and shall be enforceable as terms and conditions of this Implementing Agreement.

5. Indemnification. The hold harmless, indemnification, and defense provisions contained in section C(11)(g) of Technical Document No. 1 shall as of the date of transfer of a Delayed Settlement Property to the United States in trust for the Tribe

extend to all Parties in Privity with the Tribe concerning the use, financing, control, management, construction, development, operation, cleanup, or any related activity on, in, under or about any of the Delayed Settlement Properties.

5.1 Parties in Privity with the Tribe. The phrase "Parties in Privity with the Tribe" shall mean parties who: (a) did not cause or contribute to the pre-transfer release of Historic Contamination; and (b) have a derivative interest founded on or growing out of contract, connection, involvement, or mutuality of interest with the Tribe with regard to one or more of the Delayed Settlement Properties. Parties in Privity with the Tribe shall include but not be limited to the following categories of Parties who meet the above criteria of 5.1(a) and 5.1(b):

5.1.1 Successors, assigns, lessees, lenders, partners, contractors, subcontractors, investors, mortgagees of the Tribe with regard to (or otherwise engaged in activities upon) one or more of the Delayed Settlement Properties;

5.1.2 Parties holding legal, contractual, or equitable interests in one or more of the Delayed Settlement Properties;

5.1.3 Parties who, due to the presence of Historic Contamination on, in, under or about one or more of the Delayed Settlement Properties, may be considered to be an owner or operator or otherwise be deemed a liable party with regard to one or more of the Delayed Settlement Properties as defined in either CERCLA (42 U.S.C. §9601 et seq.) or MTCA (Chapter 70.105D RCW) as amended or other applicable contamination laws.

5.2 Recording Indemnification. The Port shall execute a document for each of the Delayed Settlement Properties entitled the "Memorandum of Port of Tacoma Indemnification for Historic Contamination Liability Pursuant to Settlement Act." This document shall provide notice of the Port's indemnification of Parties in Privity with the Tribe pursuant to Section 5 of this Implementing Agreement.

5.2.1 The Tribe shall promptly record this document with the appropriate governmental property title recording agencies.

5.2.2 A copy of this document is attached hereto as Exhibit A and is by this reference incorporated herein.

5.3 Notice of Party in Privity with the Tribe. The Port's obligation under Section 5 of this Implementing Agreement to indemnify Parties in Privity with the Tribe is subject to the Tribe providing the Port with written notice of the identity of the third party which the Tribe has determined to be a Party in Privity with the Tribe.

5.3.1 The Tribe shall provide such written notice to the Port within ninety (90) days of the execution of the contract or agreement establishing the relationship between the Tribe and a third party determined by the Tribe to be a Party in Privity with the Tribe.

5.3.2 The Tribe shall provide such notice to the Port in the form attached as Exhibit B and entitled "Notice to Port of Party in Privity with the Tribe." Exhibit B is by this reference incorporated herein.

5.4 Limitation of Indemnification. The Port's obligation to indemnify Parties in Privity with the Tribe under Section 5 of this Implementing Agreement is limited to liability that arises, or that may in the future arise, due to the presence of Historic Contamination on, in, under or about one or more of the Delayed Settlement Properties and as set forth in Section 5.4.1 below.

5.4.1 Post Transfer Releases. The Port's duty to hold harmless, indemnify and defend Parties in Privity with the Tribe, does not extend to liability that arises as the result of a release of contamination (other than Historic Contamination) on, in, under or about a Delayed Settlement Property subsequent to the date that the Port transfers title to such Delayed Settlement Property to the United States in trust for the Tribe.

5.4.2 Violation of Use Restriction. The Port's duty to hold harmless, indemnify and defend Parties in Privity with the Tribe shall include activities taking place on a Delayed Settlement Property that cause the release of Historic Contamination, but does not extend to liability that arises as the result of a release of Historic Contamination where the Port can show that the activity of the Party in Privity with the Tribe caused the release, and that such activity is in violation of

a restriction on the use of such Delayed Settlement Property imposed by EPA in an Administrative Order on Consent or Consent Decree applicable to the specific Delayed Settlement Property in question.

5.5 Liquidated Damages. The Port's contractual obligation to Parties in Privity with the Tribe as provided for in this Section 5, is limited as set forth in Section C(11)(g) of Technical Document No. 1.

6. Use of Delayed Settlement Properties. The use of Delayed Settlement Properties shall be consistent with paragraph C(12) of Technical Document No. 1, and any applicable EPA Administrative Order on Consent or Consent Decree. Unless the Addendum for a particular Delayed Settlement Property provides otherwise and subject to Section 7 below, use of Delayed Settlement Properties shall prohibit the use of groundwater for drinking water purposes and shall be consistent with those uses allowed within "Industrial Zones M-2 and M-3" of the Tacoma Zoning Code as of the effective date of this Implementing Agreement (hereinafter collectively referred to as "Restricted Uses"). The Tribe's Restricted Uses may be modified to include additional commercial uses, provided that timely notice be given to the Port consistent with Section 8 below.

7. Change in Use of Delayed Settlement Properties. At any time in the future, if the Tribe has a requirement for commercial use consistent with the surrounding uses that is not included in the uses permitted under Section 6 of this Implementing Agreement, or the specific Addendum for that Delayed Settlement Property, the Restricted Uses may be modified to include additional commercial uses; provided that if the modification of the Restricted Uses is determined to permit uses of one or more of the Delayed Settlement Properties, for which it is determined that prior cleanup levels of Historic Contamination on, in, under or about the property are no longer deemed to be protective of human health and the environment, the Port shall promptly undertake additional cost-effective remedial activities as may be necessary and shall do so in a timely fashion so that such new or expanded use of the Delayed Settlement Property can occur. To the maximum extent possible, remedial activities will be undertaken in a manner to minimize disruption of the then current uses of the Delayed Settlement Property.

7.1 Coordination - Future Remedial Activities. Where Restricted Uses of Delayed Settlement Properties are modified, pursuant to Section C(12)(f) of Technical Document No. 1 and Section 7 of this Implementing Agreement, the Tribe will cooperate with the Port and shall incorporate reasonable construction and design requirements in its development plans to minimize the disturbance of Historic Contamination. The

Port will take the lead in undertaking any required remedial activities.

7.2 Limitations on Present/Future Use. Except as specifically provided in Section 6 and Section 7, nothing in this Implementing Agreement shall limit the use of any Delayed Settlement Property by the Tribe or a Party in Privity with the Tribe.

8. Notice of Use and/or Physical Activity on Delayed Settlement Property. The Tribe shall provide the Port with timely written notice of use and/or activities that the Tribe or a Party in Privity with the Tribe plans to undertake on any Delayed Settlement Property and of material changes thereto.

8.1 The purpose of such notice is to facilitate consultation between the Port and the Tribe (and Parties in Privity with the Tribe) and to identify whether steps may need to be taken to avoid potential releases of Historic Contamination and to insure that the activity is consistent with the Restricted Uses set forth in Section 6.

8.2 The Tribe shall provide such notice to the Port by means of a form entitled "Notice of Use and/or Physical Activity." A copy of this form is attached hereto as Exhibit C and is by this reference incorporated herein.

9. Conditional Release of Claim for Economic Loss. Subject to and conditioned upon the Port's satisfactory progress toward the completion of its obligations with regard to a Delayed Settlement Property under both this Implementing Agreement and any applicable Administrative Order, Consent Decree or other document, the Tribe shall refrain from the exercise of any claim for economic loss. Upon the Port's complete and satisfactory performance of its obligations with regard to a Delayed Settlement Property under both this Implementing Agreement and any applicable Administrative Order or Consent Decree, the Tribe shall release the Port from obligations to compensate the Tribe for its economic loss related to that specific Delayed Settlement Property, under Section C(11)(f) of Technical Document No. 1.

10. Notice. Where notice is to be provided pursuant to this Agreement, such notice must be in written form and delivered via messenger service or First Class Mail certified and return receipt requested to:

10.1 Tribe: The Director of Environmental Programs, The Puyallup Tribe of Indians, 2002 East 28th Street, Tacoma, Washington 98404, and copy to the Director of Legal Offices,

The Puyallup Tribe of Indians, 2002 East 28th Street, Tacoma, Washington 98404.

10.2 Port: Director of Environmental Affairs, Port of Tacoma, P. O. Box 1837, Tacoma, Washington 98401, and copy to the General Counsel, Port of Tacoma, P. O. Box 1837, Tacoma, Washington 98401.

11. Access. The Tribe shall upon written notice provide reasonable access to the Port as may be required by this Agreement or for the purpose of conducting such monitoring, site investigations or further removal or remedial activities as may be required pursuant to Administrative Order or Consent Decree.

12. EPA Authority. Nothing in this Implementing Agreement shall limit the authority of EPA under applicable law.

13. Effective Date. The effective date of this Agreement shall be the date upon which both parties have signed this Agreement and it has been approved by the Department of the Interior.

14. Amendment and Addenda. This Implementing Agreement may be modified by the written concurrence of the Port, the Tribe and the Department of the Interior. When signed by both parties, an addendum as described in Section 3 above, shall be an amendment to this Implementing Agreement upon approval by the Department of the Interior.

15. Execution. By their signatures set forth below the Parties agree to be bound to the terms and conditions set forth above.

January 27, 1992
DATE

March 5, 1992
DATE

PUYALLUP TRIBE OF INDIANS
Margaret Edwards
Chair, Puyallup Tribal Council

PORT OF TACOMA
Phil Sherr
President, Port Commission

APPROVED:

DEPARTMENT OF THE INTERIOR

IMPLEMENTING AGREEMENT BETWEEN PORT OF
TACOMA AND PUYALLUP INDIAN TRIBE - 7

RADS0302

RADSO392

EXHIBIT A
FINAL

MEMORANDUM OF PORT OF TACOMA
INDEMNIFICATION FOR
HISTORIC CONTAMINATION LIABILITY
PURSUANT TO SETTLEMENT ACT

1. PURPOSE

The purpose of this memorandum is to provide notice of the protection afforded to parties deemed to be in privity with the Puyallup Tribe of Indians ("Tribe") pursuant to federal law, as further implemented by means of an Implementing Agreement entered into between the Tribe and the Port of Tacoma ("Port"). The scope of such protection and the requisite relationship of the parties to the Tribe are described below.

2. BACKGROUND

2.1 The _____ Property described in Exhibit 1 attached hereto (the "Property") is being or has been transferred to the Tribe under the Settlement Agreement authorized by the Puyallup Tribe of Indians Settlement Act, 25 U.S.C. § 1773, et seq. (1991) (collectively the "Settlement"). Section 1773b(b)(2) of the Settlement Act modifies the application of the Comprehensive Environmental Response Compensation and Liability Act ("CERCLA"), 42 U.S.C. §9601 et seq., with regard to the Property, providing that "[t]he Tribe shall not be liable for the cleanup costs or in any manner for contamination on [the Property] except any contamination caused by the Tribe's activities after conveyance of [the Property] to the Tribe...."

2.2 Under the terms of Section C(11)(g) of Technical Document No. 1 to the Settlement Agreement, the Port agreed to "hold the Tribe harmless from, and to indemnify and defend the Tribe against any claim or liability which may be asserted by any private or public party due to the presence of hazardous materials, dangerous waste, or other pollution on [the Property]...." Section C(11)(g) of Technical Document No. 1 to the Settlement Agreement defines the Port's maximum liability to the Tribe under the indemnification provision.

2.3 The Port has entered into an agreement with the Tribe ("Implementing Agreement"). The Implementing Agreement addresses the hold harmless, indemnification and defense provision set forth in Section C(11)(g) of Technical Document No. 1 to the Settlement Agreement, subject to certain conditions and limitations. A copy of the Implementing Agreement is attached hereto as Exhibit 2 and is by this reference incorporated herein.

3. INDEMNIFICATION PROVISION

3.1 The hold harmless, indemnification, and defense provisions contained in section C(11)(g) of Technical Document No. 1 to the Settlement Agreement, shall as of the date of transfer of the Property to the United States in trust for the Tribe extend to all Parties in Privity with the Tribe concerning the use, financing, control, management, construction, development, operation, cleanup, or any related activity on, in, under or about the Property.

3.1.1 The phrase "Parties in Privity with the Tribe" shall mean parties who: (a) did not cause or contribute to the pre-transfer release of Historic Contamination; and (b) have a derivative interest founded on or growing out of contract, connection, involvement, or mutuality of interest with the Tribe with regard to the Property.

3.1.2 Parties in Privity with the Tribe shall include but not be limited to the following categories of parties who meet the above criteria of 3.1.1(a) and 3.1.1(b):

(a) Successors, assigns, lessees, lenders, partners, contractors, subcontractors, investors, mortgagees of the Tribe with regard to (or otherwise engaged in activities upon) the Property;

(b) Parties holding legal, contractual, or equitable interests in the Property; and

(c) Parties who, due to the presence of Historic Contamination on, in, under or about the Property, may be considered to be the owner or operator or otherwise be deemed a liable party with regard to the Property as defined in either the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA") (42 U.S.C. §9601 et seq.) or the Model Toxics Control Act ("MTCA") (Chapter 70.105D RCW) as amended or other applicable contamination laws.

3.2 The Port's obligation to hold harmless, indemnify and defend Parties in Privity with the Tribe is subject to certain

**NOTICE TO PORT OF PARTY
IN PRIVACY WITH THE TRIBE**

DATE: _____

LAND PARCEL (Check one):☐ Inner Hylebos☐ Blair Backup☐ Blair Waterway☐ Upper Hylebos☐ East West Road☐ Taylor Way**ENTITY IN PRIVACY WITH TRIBE:**

Name _____

Address _____

Contact Person Name _____

Title _____

Telephone No. _____

TERM OF RELATIONSHIP:Month/YearMonth/Year

Start

End

NATURE OF RELATIONSHIP:**PORT'S MAILING ADDRESS:**

Director, Environmental Affairs Department
Port of Tacoma
P. O. Box 1837
Tacoma, WA 98401

DATE RECEIVED
BY PORT: _____PORT REVIEW
PERSON: _____**PORT COMMENTS:**

This notification is made pursuant to Section 5.3.2 of the Implementing Agreement
Dated _____ between the Port of Tacoma and the Puyallup Indian Tribe.

NOTICE OF USE AND/OR PHYSICAL ACTIVITY

DATE: _____

LAND PARCEL (Check one):☐ Inner Hylebos☐ Blair Backup☐ Blair Waterway☐ Upper Hylebos☐ East West Road☐ Taylor Way**DESCRIBE ANY SPECIFIC PROPERTY USE, PHYSICAL ACTIVITIES IMPACTING SOILS, SEDIMENTS OR GROUNDWATER, AND TIMING OF SUCH ACTIVITIES:****TRIBE CONTACT PERSON:** _____

Telephone No. _____

ENTITY PERFORMING PHYSICAL ACTIVITY:

Name _____

Address _____

Contact Person Name _____

Telephone No. _____

ACKNOWLEDGMENT OF RESTRICTED USE: The performing entity has read and will comply with paragraph 6 of the "Implementing Agreement Between the Port of Tacoma and the Puyallup Indian Tribe", to wit:

6. Use of Delayed Settlement Properties. The use of Delayed Settlement Properties shall be consistent with paragraph C(12) of Technical Document No. 1, and any applicable EPA Administrative Order on Consent or Consent Decree. Unless the Addendum for a particular Delayed Settlement Property provides otherwise and subject to Section 7 below, use of Delayed Settlement Properties shall prohibit the use of groundwater for drinking water purposes and shall be consistent with those uses allowed within "Industrial Zones M-2 and M-3" of the Tacoma Zoning Code as of the effective date of this Implementing Agreement (hereinafter collectively referred to as "Restricted Uses").

By: _____

Its: _____

PORT'S MAILING ADDRESS:

Director, Environmental Affairs Department
 Port of Tacoma
 P. O. Box 1837
 Tacoma, WA 98401

DATE RECEIVED

BY PORT: _____

PORT REVIEW

PERSON: _____

PORT COMMENTS:

This notification is made pursuant to Section 8 of the Implementing Agreement
 Dated _____ between the Port of Tacoma and the Puyallup Indian Tribe.

ADDENDUM NO. 1
INNER HYLEBOS PROPERTY

1. Inner Hylebos Property. The Final Investigation Report for the Inner Hylebos Property (Landau and Assoc., January __, 1992) concludes that the chemical constituents of concern in and about the soils are below residential cleanup levels established pursuant to the State of Washington Model Toxics Control Act, chapter 70.105D RCW and do not require remedial action. The Final Investigation Report concludes that the site is appropriate for commercial and industrial uses. The Environmental Protection Agency, Ecology and the Tribe have concurred with the findings and conclusions of the Inner Hylebos Final Investigation Report pursuant to the Memorandum of Agreement. A diagram of the property is attached.

2. Use of Property. Pursuant to Section 6 of the Implementing Agreement there are no restrictions on commercial or industrial use except that for any excavation below three (3) feet of the surface on the spit portion of the Property, identified in the map attached hereto, use of groundwater for drinking water purposes shall be prohibited.

3. Marine Sediments. Certain areas of marine sediments within the Inner Hylebos Property were identified as potential problem areas in EPA's Commencement Bay/Nearshore Tideflats Record of Decision. These areas are not currently designated for active remediation, but for natural recovery. However, if natural recovery is not successful, active remediation may be required.

4. Tribal Dredging. The Port and the Tribe recognize that development of the Inner Hylebos Property may require certain areas to be dredged. Except as provided in this Addendum No. 1, the Tribe will be responsible for the cost of such dredging.

5. Sediment Testing. If PSDDA standards for open water disposal are likely to be exceeded because of the presence of Historic Contamination, then the Port and the Tribe shall each pay fifty percent (50%) of any chemical and/or biological testing required.

6. Dredged Disposal. In the event that the presence of Historic Contamination precludes the disposal of dredged materials in or at an open water site, the Tribe shall contribute toward the costs of such disposal a base amount per cubic yard of dredged materials. This base amount to be paid by the Tribe shall be equal to the then prevailing cost of disposal of a cubic yard of

uncontaminated dredged materials at an open water site. All costs associated with disposal over the base amount contributed by the Tribe shall be borne solely by the Port. The Port's obligation under this Section 6 is conditioned upon the Tribe first taking the following two steps:

6.1 The Tribe shall, in accordance with Section 8 of the foregoing Implementing Agreement, effective March __, 1992, notify the Port in writing, of the Tribe's intention to conduct dredging activity at, on or under the Inner Hylebos Property; and,

6.2 The Tribe shall submit an application for an Army Corps of Engineers Section 404 dredge or fill permit to conduct dredging at, on or under the Inner Hylebos Property.

7. Port Disposal Site. In conjunction with other projects of the Port, the Port shall use its best efforts to permit a nearshore site for disposal of the Tribe's contaminated dredged materials associated with the Inner Hylebos Property. The Port and the Tribe shall cooperate in good faith to coordinate their respective activity with regard to the Port's permitting of a nearshore contaminated dredged materials disposal site to accommodate the Tribe's dredging and development of the Inner Hylebos Property. Subsequent to transfer of the Inner Hylebos Property, the Port's obligation to the Tribe under Section 6 above with respect to the Tribe's use of a specific disposal site for contaminated dredged materials shall expire with regard to that specific disposal site, 365 days after the date that the Tribe receives written notice from the Port of the availability of such nearshore disposal site.

8. Port Funding. The Port's financial obligation under section 6 of this Addendum No. 1, with regard to the dredging acceptance and disposal of contaminated materials from the Inner Hylebos Property for disposal at an available disposal site shall not exceed a total cost of \$2.30 per square foot of surface area to be dredged.

9. Dickman Dump. Large quantities of bark have been removed from the intertidal area surrounding the bulkhead in an area known as the Dickman Dump. The Tribe will manage any further bark removal and will secure any necessary approvals from appropriate agencies, including, but not limited to, the U.S. Army Corps of Engineers. Upon the Parties' execution of this Addendum No. 1, the Port shall make periodic payments upon receipt of invoice, by the Tribe or its agents, up to a total amount of \$85,000 toward costs associated with the planning, design and removal of bark and any necessary backfill activity of the Bark Removal area.

10. Port Mitigation Measures. Subsection B(1)(a)(11) of Technical Document No. 4 to the Settlement Agreement allows the Port to create certain inter-tidal habitat within the Inner Hylebos property. The Parties agree that the Tribe may, at its option, provide the Port with written notice that the Tribe has elected to have the habitat mitigation described in that subsection provided for at other Tribal property. This substitution by the Tribe is subject to the approval of the Port, which approval shall not be unreasonably withheld. The Tribe may make this election so long as there is no difference in the Port's cost of creating the habitat and as long as the Port receives equivalent mitigation and/or enhancement credit.

11. Best Management Practices. The Tribe will implement best management practices at its marina with particular emphasis on in-water boat repair and maintenance activities, to prevent the potential for sediment contamination from marina activities.

12. Execution. By their signatures set forth below the Parties agree to be bound by the terms and conditions set out in this Addendum No. 1, which upon execution shall become a part of and incorporated within the foregoing Implementing Agreement between the Port of Tacoma and the Puyallup Indian Tribe.

PUYALLUP INDIAN TRIBE


Chair, Puyallup Tribal Council

PORT OF TACOMA


President, Port Commission

January 27, 1992
DATE

March 5, 1992
DATE

APPROVED:

DEPARTMENT OF THE INTERIOR

DATE

FINAL

ADDENDUM NO. 2

TAYLOR WAY PROPERTY

1. Taylor Way Property. The Final Investigation Report (Hart Crowser, October 15, 1991) concludes constituents of interest in soils are below MTCA residential cleanup levels established pursuant to the State of Washington Model Toxics Control Act, Chapter 70.105D RCW and do not require remedial action. A potential exists for Historic Contamination at this site to include offsite migration of volatile organics through the groundwater from the nearby BPA site to the Taylor Way Site due to disposal of waste lime sludge at the BPA site, although no volatile organic compounds were detected in Taylor Way groundwater samples. The Final Investigation Report concludes the site is appropriate for commercial and industrial uses. EPA, the Department of Ecology, and the Puyallup Tribe of Indians have concurred with the findings and conclusions of the Taylor Way Property Final Investigation Report pursuant to the Memorandum of Agreement. A diagram of this property is attached.
2. Use of Property. Pursuant to Section 6 of the Implementing Agreement there are no restrictions on commercial and industrial use of the property related to Historic Contamination, except that groundwater at the site shall not be used for drinking water purposes.

February 27, 1992
DATE

PUYALLUP TRIBE OF INDIANS

Margaret Edwards
Chair, Puyallup Tribal Council

PORT OF TACOMA

Alfred Shum
President, Port Commission

March 5, 1992
DATE

APPROVED:

DEPARTMENT OF THE INTERIOR

DATE

ADDENDUM NO. 3

EAST WEST ROAD PROPERTY

1. East West Road Property. The Final Investigation Report (Hart Crowser, August 27, 1991) concludes constituents of interest in soils are below MTCA residential cleanup levels established pursuant to the State of Washington Model Toxics Control Act, Chapter 70.105D RCW, and do not require remedial action. A risk assessment was conducted to evaluate impacts of groundwater contamination and the potential exposure via inhalation of volatile organics originating from the groundwater. Historic Contamination at this site includes offsite migration of volatile organics through the groundwater from the nearby BPA site to the East West Road Property due to the disposal of waste lime sludge at the BPA site. Historic Contamination at this site, including volatile organic compounds detected in East West Road groundwater samples, require the use restrictions set forth in paragraph 2 below. The Final Investigation Report concludes that with institutional controls the site is appropriate for industrial and commercial use. The Environmental Protection Agency, the Department of Ecology, and the Puyallup Tribe of Indians have concurred with the findings and conclusions of the East West Property Site Final Investigation Report pursuant to the Memorandum of Agreement. A diagram of this property is attached.

2. Use of Property. Pursuant to Section 6 of the Implementing Agreement there are no restrictions on commercial or industrial use of the property related to Historic Contamination, except that: (1) groundwater at the site shall not be used for drinking water purposes; (2) if required, groundwater disposal plan shall be prepared with regard to potential dewatering during construction; (3) appropriate worker protection shall be employed during ground intrusive construction activities; and (4) vapor barriers, gravel drains, venting or other appropriate measures shall be incorporated into design and construction of all structures with permeable floors built on this site.

3-5-92

DATE

THE PUYALLUP TRIBE OF INDIANS

Margaret Edwards
Chair, Puyallup Tribal Council

THE PORT OF TACOMA

Phil Sherr
President, Port Commission3-5-92

DATE

APPROVED:

DEPARTMENT OF THE INTERIOR

DATE

ADDENDUM NO. 4

UPPER HYLEBOS PROPERTY

1. Upper Hylebos Property. The Final Investigation Report (Landau & Assoc., May 10, 1991) concludes that the chemical constituents of concern in and about the soils are below residential cleanup levels established pursuant to the State of Washington Model Toxics Control Act, Chapter 70.105D RCW and do not require remedial action. The Final Investigation Report concludes that the site is appropriate for commercial and industrial uses. The Environmental Protection Agency, Ecology and the Tribe have concurred with the findings and conclusions of the Upper Hylebos Final Investigation Report pursuant to the Memorandum of Agreement. A diagram of the property is attached.

2. Use of Property. Pursuant to Section 6 of the Implementing Agreement there are no restrictions on commercial and industrial use of the upland portion of the property related to Historic Contamination, except that groundwater at the site shall not be use for drinking water purposes.

3. Marine Sediments. Certain marine sediments on the property may require remediation pursuant to the Commencement Bay/Nearshore Tideflats Record of Decision ("CB/NT ROD"). The most cost-effective approach with regard to marine sediments is to evaluate the cleanup alternatives and remedial design of the cleanup undertaken under the CB/NT ROD for the Head of the Hylebos Problem Area.

4. Tribal Dredging. The Port and Tribe recognize that, in addition to meeting the requirements of the CB/NT ROD, the configuration of the area to be dredged must meet the Tribe's development plan for the site. Such plan will be communicated to the Port, in writing, by January 1, 1994. The parties also recognize that certain areas of marine sediments at the property may need to be dredged by the Tribe for development, if sediment dredging is not required to comply with the CB/NT ROD. In such a case, the dredging will be conducted in accordance with the provisions of sections 4, 5, 6 and 7 of this Addendum No. 4.

5. Sediment Testing. If PSDDA standards for open water disposal are likely to be exceeded because of the presence of Historic Contamination, then the Port and the Tribe shall each pay fifty percent (50%) of any chemical and/or biological testing required.

6. Dredged Disposal. In the event that the presence of Historic Contamination precludes the disposal of dredged materials in or at an open water site, the Tribe shall contribute toward the costs of such disposal a base amount per cubic yard of dredged materials. This base amount to be paid by the Tribe shall be equal to the then prevailing cost of disposal of a cubic yard of uncontaminated dredged materials at an open water site. All costs associated with disposal over the base amount con-

tributed by the Tribe shall be borne solely by the Port. The Port's obligation under this subsection is conditioned upon the Tribe first taking the following two steps.

6.1 The Tribe shall in accordance with Section 8 of the Implementing Agreement, effective March __, 1992, notify the Port in writing of the Tribe's intention to conduct dredging activity at, on or under the Upper Hylebos Property; and,

6.2 The Tribe shall submit an application for an Army Corps of Engineers Section 10/404 dredge and fill permit to conduct dredging at, on or under the Upper Hylebos Property.

7. Port Funding. The Port's financial obligation under Section 5 of this Addendum No. 4, with regard to the dredging acceptance and disposal of contaminated materials from the Upper Hylebos Property for disposal at an available disposal site shall not exceed a total cost of \$3.63 per square foot of surface area to be dredged.

8. Post-Remediation Monitoring. The Port will conduct sediment monitoring of the property subsequent to the remediation conducted as part of the Head of the Hylebos remediation.

9. Piling Removal. The Port will remove and replace up to ten (10) pilings located on the Upper Hylebos Property, if removal of such pilings is required to accommodate the dredge of the property as provided in this Addendum No. 4.

10. Execution. By their signatures set forth below the Parties agree to be bound by the terms and conditions set out in this Addendum No. 4, which upon execution shall become a part of and incorporated within the foregoing Implementing Agreement between the Port of Tacoma and the Puyallup Indian Tribe.

February 27, 1992
DATE

3-5-92
DATE

THE PUYALLUP TRIBE OF INDIANS

Margaret Edwards
Chair, Puyallup Tribal Council

THE PORT OF TACOMA

Will Shue
President, Port Commission

APPROVED:

DEPARTMENT OF THE INTERIOR

DATE

Agreement

between

**the Puyallup Tribe of Indians,
local Governments in Pierce County,
the State of Washington,
the United States of America,
and certain private property owners.**

August 27, 1988

AGREEMENT

August 27, 1988

AGREEMENT
August 27, 1988

AGREEMENT: TABLE OF CONTENTS

<u>SECTION</u>	<u>PAGE</u>
PURPOSE AND SCOPE OF AGREEMENT; PARTIES	1
I. SETTLEMENT LANDS	2
A. Property Conveyed Other Than Current Riverbed	2
B. Current Riverbed	3
Map of Port Properties	5
Map of Fife Properties	6
II. PAYMENTS TO MEMBERS OF PUYALLUP TRIBE	7
III. PERMANENT TRUST FUND FOR TRIBAL MEMBERS	7
A. Trust Fund	7
B. Distribution of Trust Fund Income and Review of Trust Fund Management	8
C. Duration of Trust	8
IV. FISHERIES	8
A. Fisheries Enhancement Program	8
B. Fisheries Protection	9
1. Mitigation and Enhancement Measures for Specific Port of Tacoma Development Projects	9
2. Tribe's Approval of Specified Port of Tacoma Projects	10
3. General Purpose Local Government Actions	11

C.	Access to Fishery	13
1.	Navigation	13
2.	Milwaukee Peninsula/Puyallup River-Mouth Fishing Station	14
D.	Resolving Conflicts Between Development and Fisheries Protection	14
V.	JOB TRAINING & PLACEMENT PROGRAM; SOCIAL & HEALTH SERVICE IMPROVEMENTS	15
A.	Job Training and Placement	15
B.	Private Sector Jobs	15
C.	Social & Health Service Improvements	16
1.	Capital Projects	16
2.	Training Trust Fund	16
VI.	ECONOMIC DEVELOPMENT	16
A.	Economic Development and Land Acquisition Fund	16
B.	Small Business Fund for Tribal Members	16
C.	Blair Navigation Project Participatory Payments	16
VII.	BLAIR NAVIGATION PROJECT	17
VIII.	FUTURE GOVERNMENTAL AUTHORITY, RESPONSIBILITY, AND COOPERATION	17
A.	Governmental Jurisdiction and Authority	18
1.	Tribal Jurisdiction and Governmental Authority - General	18
2.	Tribal Jurisdiction and Governmental Authority - Fisheries	19
3.	Tribal Jurisdiction and Governmental Authority - Environmental	20
4.	Jurisdiction and Governmental Authority - Other Governments	21

B.	Future Trust Lands	22
C.	Future Consultation Between the Tribal Government and Local Governments	22
D.	Governmental Services	23
E.	Agreement for Fife	24
F.	Law Enforcement	25
	1873 Survey Area: Illustration	27
IX.	RESOLUTION OF PUYALLUP TRIBAL LAND CLAIMS	28
X.	IMPLEMENTATION AND MODIFICATION	30
A.	Structure of Agreements	30
B.	Ratification By the Tribal Members	30
C.	Federal and State Participation	31
D.	Effective Date	31
E.	Modification	32
XI.	FEDERAL COURT JURISDICTION	32
A.	Liability	32
B.	Consent to Sue	33
XII.	LEGAL DISCLAIMER	33

AGREEMENT

PURPOSE AND SCOPE OF AGREEMENT; PARTIES

This Agreement establishes a framework for cooperation and a mutually beneficial future for the community. The Agreement: (1) adds to the Tribe's land base and provides resources for economic development; (2) provides each enrolled adult member of the Tribe with funds to meet personal needs, (3) provides resources for the Tribe to meet its members' health, education, and social needs; (4) provides for substantial restoration of the fishery resource, and allows for future development while lessening impacts on fisheries; (5) provides for significant employment and training opportunities for Puyallup Tribal members; (6) provides funds for land acquisition and development, and small business assistance; (7) provides for construction of Blair Project; (8) resolves conflicts over governmental jurisdiction; and (9) resolves all land claims by the Puyallup Indian Tribe, except as reserved in this Agreement.

This is an agreement between the Puyallup Indian Tribe and the United States, the State of Washington, and the signatory local governments and private parties. The Agreement will become effective when the steps shown in Section X. have been completed. At that time, this document and the documents specified in Section X. will become the Agreement of the parties.

Throughout the negotiations leading to this Agreement, both sides had the benefit of legal counsel and technical consultants. It is therefore agreed that all parties had the necessary resources to understand and make the difficult decisions required.

The following are the parties to this Agreement:

1. United States of America
2. Puyallup Indian Tribe
3. State of Washington
4. Port of Tacoma
5. Pierce County
6. City of Tacoma
7. City of Fife
8. City of Puyallup
9. Union Pacific Railroad Company
10. Burlington Northern Inc.
11. Commencement Bay Tideland Owners Committee, a non-profit corporation
12. Riverbed Owners Committee

All parties recognize that this Agreement cannot reverse or erase all of the injustices and problems that have occurred, and no one pretends that it does. Instead, the parties, although mindful of the past, have negotiated this Agreement to allow the Tribe and its members to provide themselves a secure future, to give greater certainty to Indians and non-Indians alike, and to encourage a cooperative relationship which will reduce the danger of continued injustice and continuing conflicts in the future.

I. SETTLEMENT LANDS

A. Property Conveyed Other Than Current Riverbed

The Tribe will receive an estimated 899 acres of land. Those properties and certain improvements have an estimated current value of \$37,460,000. Legal descriptions, improvements, restrictions and encumbrances are contained in Document 1. Two location drawings of the properties are included in this section.

Blair Waterway Property

The Tribe will receive 43.4 acres fronting on the Blair Waterway. The value of this property will increase substantially with completion of the Blair Project.

Blair Backup Property

The Tribe will receive 85.2 acres located between Taylor Way and Alexander Avenue, together with the buildings on the property. This property will retain its current designation as a Foreign Trade Zone. The value of this property will increase substantially with completion of the Blair project.

Inner Hylebos Property

The Tribe will receive 72.9 acres of property on the Inner Hylebos, including a marina and a log storage site.

Upper Hylebos Property

The Tribe will receive 5.9 acres of property located at the head of the Hylebos Waterway.

Union Pacific Property (Fife)

The Tribe will receive 57 acres, subject to an easement for a roadway of approximately 4 acres. The Tribe will have an option to buy an additional 22 acres of land at its appraised fair market value.

Union Pacific and the City of Fife agree to fund up to \$2 million of the cost of construction of an underpass or overpass at Frank Albert Road. For purposes of this Agreement, the improvement value to the property will be \$800,000.

Torre Property (Fife)

The Tribe will receive 27.4 acres located on Frank Albert Road in Fife, or the cash value of that property. The Port will determine which option will be implemented.

Taylor Way/East-West Road Properties

The Tribe will receive two pieces of property totalling 7.4 acres, one on Taylor Way, the other on East-West Road. These properties will retain their current designation as a Foreign Trade Zone.

Forest, Recreation and Cultural Areas

The Tribe will receive \$500,000 for the purchase of open space, forest and cultural lands for uses to be determined by the Tribe and its members. It is estimated this amount would purchase approximately 600 acres.

General Requirements for Lands Conveyed to Tribe Under This Agreement

The parties agree that lands conveyed by this Agreement will be placed in trust with on-reservation status by federal legislation enacting this Agreement, subject to the uses specified in Document 1. However, nothing in that designation shall be construed as a precedent for or against the granting of on-reservation status to other lands interior or exterior to the 1873 Survey Area. Forest, recreation and cultural lands will be placed in trust and designated as off-reservation status.

Final transfers of property will be consistent with established land exchange procedures. Contamination audits will be completed by the Port on its properties for the purpose of establishing that each property complies with applicable federal or state contamination law, and is reasonably useful for commercial/industrial development by the Tribe. See Document 1 for details.

B. Current Riverbed

The non-Indian parties will convey any right, title or interest they have in the submerged lands in the Puyallup

River within the 1873 survey area below the mean high water line to the United States in trust for the Tribe.

1. The United States and the Tribe confirm all existing rights-of-way across the river bed and the right to maintain them. The Tribe agrees it will not impose any charge for or regulate the use and maintenance of such rights-of-way.

2. The Tribe shall not deny, condition or impose any charge for discharges of waste water, storm water, or sanitary waters which discharges comply with applicable federal water standards and do not interfere with the Tribe's treaty protected fishing rights.

3. Any other easements for public purposes or utilities shall not be unreasonably withheld, but reasonable charges can be imposed by the Tribe for such easements valued in the same manner as the valuation of property in eminent domain proceedings. However, the Tribe, because of funds advanced by the State in this Agreement agrees that it will not charge the State for an additional transportation easement, including necessary support structures, to cross the river so long as the structure is substantially completed within 15 years of the effective date of this Agreement.

4. Within 3 years of the effective date of this Agreement, the Tribe, State, Federal Government, and the County will agree to a plan for flood control. That plan is to address the location, amount and timing of necessary gravel removal, vegetation control, and the roles and responsibilities of the Tribe, State, County and Federal Government in the plan development and implementation.

5. The Tribal Trust ownership of the river bed shall not enlarge or diminish the fishing rights of any person or party.

LANDS TO PUYALLUP TRIBE

ADDITIONAL PROPERTIES
(NOT SHOWN)

TOHRE PROPERTY - FIVE

UNION PACIFIC PROPERTY - FIRE

FOREST RECREATION & CULTURAL AREAS
(TO BE PURCHASED BY TRIBE)

INNER HYLEBOS PROPERTIES

UPPER HYLEBOS PROPERTY

**BLAIR BACKUP
PROPERTY**

TAYLOR WAY
EAST/WEST RD
PROPERTIES

~~BLAIR W/W PROPERTY~~

DLAIR WATERWAY

BLAIR FATHERWAY

SITCUM VATEREAE

MILWAUKEE WATERWAY

POYALLOP RIVER

~~AGREEMENT - Page 5~~
~~August 27, 1988~~

II. PAYMENTS TO MEMBERS OF PUYALLUP TRIBE

The Tribal members will receive \$24 million that will be placed in an annuity fund or other investment program. Each person who is an enrolled member of the Tribe at the time of ratification of this Agreement by an affirmative vote of the Tribe's members will receive a one-time payment from the fund. Each enrolled member who has reached the age of 21 at the time that the Agreement becomes effective will receive the payment as soon as possible after that date. All other members will receive payment upon reaching the age of 21.

The \$24 million will be placed in an annuity fund or other financial investment program so that each member of the Tribe will receive a payment of approximately \$20,000. The Board of Trustees described in Section III below will be responsible for selecting a financial institution or institutions to administer the funds. The financial institution(s) shall be selected by the Board no later than 60 days after the Board is elected. It is the intention of the parties to this Agreement that the payments to each qualified member be made as soon as is practicable and financially prudent, as determined by the Board in consultation with the financial institution(s). No payments of any kind except the approximately \$20,000 per capita payable to all Tribal members shall be paid to the Board or its members out of this fund. A reasonable and customary fee may be paid out of income from the fund to the financial institution(s) for administration of the fund.

This estimate of \$20,000 per member is based on an assumed enrolled membership of 1,400 on the date of ratification. The exact amount which each member will receive may be slightly higher or lower depending on interest rates at the time the Agreement is implemented, and the ages of members at the time the Agreement is ratified. This program will last for 21 years from the date of ratification.

For details, see Document 2.

III. PERMANENT TRUST FUND FOR TRIBAL MEMBERS

A. Trust Fund

The Tribe shall receive a trust fund totalling \$22 million for the benefit of the Tribe and its members. The full amount provided by this Agreement shall be held in trust by the United States. Only the income may be spent in any one year. Income earned from the fund shall be used solely for the following purposes:

1. Housing
2. Elderly Needs
3. Burial and Cemetery Maintenance
4. Education and Cultural Preservation
5. Supplemental Health Care.
6. Day Care
7. Other Social Services

B. Distribution of Trust Fund Income and Review of Trust Fund Management:

Distribution of the income from the trust fund shall be directed by a nine-member Board of Trustees. The Board shall also oversee the trustees' administration of the fund. The Board will have three Trustees elected by the Tribe from its members; three Trustees elected by the Tribal Council; one Trustee designated by the Department of Interior; and two Trustees from the financial or social service community, selected by the Tribal and Federal Trustees.

C. Duration of Trust:

The Trust Fund shall be in existence for the duration of the existence of the Tribe, as recognized by the United States Government.

See Document 3 for details of Permanent Trust Fund.

IV. FISHERIES

Introduction: The goal of the fisheries portion of this Agreement is to enhance the fisheries resource, including protection of necessary habitat, while allowing construction and development to occur. The total value of the fisheries program is \$10,165,000, and an unspecified value for mitigation and enhancement for approved development projects. These funds will be used by the State and Tribal fisheries managers, through their cooperative management programs, to develop and implement a comprehensive production plan for the Basin. These funds are separate from any additional money that may be provided through the Congress, and do not include any monies previously agreed to by the State of Washington as a result of prior cooperative management projects.

A. Fisheries Enhancement Program

1. The Tribe will receive \$7,935,000 from the State of Washington for its use in improving the Puyallup River and Commencement Bay Basins fishery through: (a) site acquisition; (b) facilities construction and improvement; (c) habitat improvement; (d) equipment purchase;

(e) research; and (f) operation and maintenance of facilities. In addition, the State will make improvements to existing state facilities in the Puyallup River Basin to achieve increased production in the Basin, at a cost of \$800,000.

2. The Port of Tacoma will provide \$1,300,000 to the Tribe for fisheries enhancement. These funds are in addition to \$675,000 transferred from the Port of Tacoma to the Tribe under the Terminal 3 Agreement.

3. The parties recognize the Tribe's program for fisheries enhancement through the siting and development of Tribal net pen facilities. The Tribe and the State Departments of Fisheries and Wildlife will jointly identify those potential sites which are biologically and environmentally suitable for Tribal net pens. The parties with permitting authority will use their best efforts to facilitate the permitting of pen sites necessary to the implementation of the fisheries enhancement goals of this Agreement.

4. The Federal Government will spend \$100,000 for Commencement Bay navigation equipment. Additionally, \$30,000 will be provided by the Port for replacement of damaged fishing equipment.

B. Fisheries Protection

1. Mitigation and Enhancement Measures for Specific Port of Tacoma Development Projects

The approval given to the projects listed in the next subsection is conditioned on completion of the following mitigation and enhancement measures, as they relate to those individual projects:

- a. Reduced Fill Area and Milwaukee Waterway Shallowing
- b. Sitcum Waterway End Slope Revision
- c. Pier Construction Standards
- d. Slip 5 Shallowing
- e. Slip 1 Fill Slopes
- f. Blair Waterway Dredging Slopes
- g. Blair Waterway Bank Improvements
- h. Wapato Creek-Blair Waterway Outfall
- i. Wapato Creek Bridging
- j. Inner Hylebos Shallowing

These mitigation and enhancement projects will be constructed in coordination with the development projects listed below.

In addition to the above mitigation and enhancement measures to be carried out by the Port, the Port will provide a \$1,300,000 cash payment, both as part of the Fisheries Enhancement program outlined in Section IV.A. above.

The Port will work with Tribal biologists in developing the Port's plans. Within the cost parameters of meeting the area requirements, the Port staff will work with the Tribal staff to maximize the fisheries benefits from the proposed activities and construction design.

2. Tribe's Approval of Specified Port of Tacoma Projects

The Port of Tacoma has proposed certain construction projects listed below, with the provisions for specified mitigation and enhancement stated above. The Tribe agrees to give approval to the following projects, on the condition that the Port constructs them in the manner described in Document 4. If the conditions are met, the Tribe agrees not to oppose the projects in any federal, state, or local permitting processes. Projects are fully defined in Document 4, Fisheries, and Document 6, Blair Project.

a. Milwaukee Waterway Fill. Filling of 72.5 percent of the Milwaukee Waterway using Blair Waterway dredged material.

The Port will not begin the dredging or construction of this project and will stop all further processing of permits for this project prior to reaching the comment stage for the FEIS, and delay the restart of that process until the effective date of this Agreement. The Tribe shall not oppose the application during this delay period, but reserves all rights to oppose the project if the Agreement does not become effective.

As part of this stoppage of further processing, the Port will request the Corps of Engineers to delay its formal review and publication of the Draft Supplemental FEIS currently being prepared. The Tribe will notify the Corps that their letters of March 1 and May 17, 1988 relating to that draft document are to be held in abeyance pending the

Tribe's reevaluation of the project and the effective date of this Agreement.

b. Expansion of Terminal 3. Filling of Slip 1 and extension of Terminal 3 pier by up to 1,000 feet.

c. Northeast Blair Pier. Construction of a pier at the Blair Waterway turning basin of a length not to exceed 1,000 feet.

d. Blair Navigation Project. Widening and deepening of the Blair Waterway navigational channel to include dredging and placement of the dredge material into the Milwaukee Fill project and replacement or bypass of the East 11th Street (Blair) bridge across the Waterway. Also included in this project is long-term maintenance dredging of both the Blair and Sitcum Waterways.

The bypass road portion of the Blair Navigation Project includes an elevated bridge crossing over a portion of Tribal land located along the east bank of the Puyallup River, downstream from the existing Highway 99 Bridge. As part of the Tribe's approval of this project which is to be completed by the Washington State Department of Transportation, it is agreed that land will be provided by the Tribe for bridge construction. Details of agreed compensation and continued access by Tribal fishermen is in Document 6.

The Port agrees to schedule construction of the listed projects and their mitigation and enhancement measures in a manner which minimizes fisheries impacts, in accordance with agency requirements. Mitigation and enhancement measures shall be completed concurrently with the project.

3. General Purpose Local Government Actions

a. Definition

For purposes of this Section IV, the phrase "general purpose local government" (hereinafter "local government") refers to cities and the county who are parties to this Agreement.

b. Goals

The Tribe's treaty fishery must be managed to achieve increased salmon and steelhead production, including protection of necessary habitat, while providing for residential, commercial, industrial and other development, natural resource use, and protection of lives and property from flooding. These goals will be recognized by the local governments which are parties to this Agreement and after review they may adopt or modify as needed: (1) watershed action plans; (2) shoreline master programs; (3) land and resource use plans and regulations; and (4) environmental protection regulations. In addition, the local government parties, in consultation with the Tribe, will develop procedures for land use matters as a part of this Agreement.

c. Implementation

The appropriate local governments will take the following actions as needed to implement the goals:

(1) Prepare action plans for drainage basins in Water Resource Inventory Area (WRIA) #10, including the Puyallup River and Commencement Bay drainage basins, in accordance with Puget Sound Water Quality Management Plan or other appropriate standards.

(2) Develop and implement a County wetland management program, in consultation with the Tribe;

(3) Provide regulations to preserve or provide streamside vegetation, for the purpose of maintaining water temperature, minimizing erosion sedimentation, providing food, and retaining protection from predation;

(4) Modify flood control activities to offer increased protection to the fisheries habitat;

(5) Expand or modify County Basin Flood Control Study to evaluate alternative measures for flood control regarding fisheries and flood control benefits and impacts; provide the Tribe with copies of County Hydraulic Permit applications on request; work with Tribe to carry out gravel removal in a manner

which takes into account protection of fisheries habitat;

(6) Develop culvert and floodgate designs and installation, maintenance and inspection guidelines and programs for improved fish passage;

(7) Dechlorinate treated sewage discharges to fresh water if necessary to protect the fisheries resource;

In addition, the Tribe may review existing land use plans, regulations and policies and consider whether changes are needed to afford greater protection of the fisheries resource. Local governments will provide the Tribe with access to necessary information to accomplish such review. The local government shall consider any recommendation from the Tribe regarding fisheries habitat concerns.

C. Access to Fishery

1. Navigation

Conflicts between Tribal fishing and commercial shipping will be reduced through a Navigation Agreement which will:

- (a) Establish vessel traffic lanes for shipping traffic;
- (b) Identify anchoring sites for ships;
- (c) Set forth operation and communication procedures for implementation of the Agreement.

In addition, the Federal Government will spend \$100,000 to provide navigational lights and other equipment to reduce conflict between Tribal fishing and commercial shipping traffic in Commencement Bay.

Additionally, \$30,000 will be provided by the Port for establishment of a revolving fund to pay for the cost of equipment damaged by shipping traffic, as part of the Terminal 3 agreement.

2. Milwaukee Peninsula/Puwallup River-Mouth Fishing Station.

The Port will provide and maintain a 12-foot gravel road access and turn-around to this site, and permit emergency vehicle access through the Sea-Land site. Details of the above access assurances are provided in Document 4.

D. Resolving Conflicts Between Development and Fisheries Protection

1. This section establishes a process and standards to resolve conflicts between specific proposed development projects and protection of the fishery. A schedule and procedures will be provided to ensure communication between developers and the Tribe in order to encourage resolution of disputes, and to provide a voluntary arbitration system for unresolved disputes.

2. The standards for determining appropriate mitigation and/or enhancement are contained in Document 4. At a minimum, mitigation and enhancement will meet all applicable Federal and State requirements. Some developers may choose to reach an agreement with the Tribe which exceeds those requirements.

3. Projects undertaken by the parties to this system will be done in a manner that results in no net degradation to the fisheries resource and in addition provides, in appropriate cases, an enhancement element to improve the resource. The technical standards for determining appropriate mitigation and/or enhancement are contained in Document 4.

4. A developer who complies with the requirements for mitigation and enhancement as set forth in Document 4 will receive the concurrence of the Tribe and an agreement not to oppose the project in any federal, state or local permitting processes, or to seek a restraining order or injunction or otherwise seek to delay or stop construction of the project.

When the developer has completed the required mitigation and enhancement measures, the developer shall have met the conditions of this Agreement; provided, however, that the developer is fully responsible for ensuring that the measures are properly implemented, and that the intended operation and functioning of the mitigation and enhancement elements do take place, and that the mitigation and enhancement measures continue to function for a

reasonable period of time comparable to what could have been expected for the undisturbed habitats.

V. JOB TRAINING & PLACEMENT PROGRAM; SOCIAL & HEALTH SERVICE IMPROVEMENTS

A. Job Training and Placement

265 Tribal members will have the opportunity to participate in a Job Training program, directed by the State Department of Employment Security in cooperation with the Tribe. This program includes the job training program developed as a result of the Terminal 3 agreement between the Port and the Tribe. The program will last for 4 years and cost \$937,000. It will provide: 1) pre-employment training, 2) basic skills remediation, 3) job search workshops and on-the-job training, 4) vocational training, 5) support services and follow-up, 6) job placement program, and 7) technical assistance for development of Tribal industries.

The program will be administered under the guidance of a steering committee composed of representatives from the Tribe, Employment Security Department, Bates Vocational/Technical Institute, Tacoma-Pierce County Private Industry Council, Commencement Bay Tideland Owners Committee and other employers providing jobs to Tribal members under Section V.B. of the Agreement. Specific implementation provisions are described in Document 5.

As a part of this program, the State will provide training for at least four Tribal members in culture activities.

B. Private Sector Jobs

A job placement program will be implemented by the Employment Security Department to provide for placement of Tribal members in jobs to match the members' skill and training. One hundred fifteen jobs for Tribal members, valued at \$2,500,000, will be provided by members of the Commencement Bay Tideland Owners Committee and other private businesses in the community, with placement through the Employment Security Department. In addition, the private sector will provide a coordinator for implementation of this commitment, at a cost of \$100,000.

See Document 5 for details.

C. Social & Health Service Improvements

1. Capital Projects

The State Department of Social and Health Services (DSHS) will provide to the Tribe funds for a 20-bed elder care facility, 20-bed youth substance abuse facility, a 42-child day care center, as well as computer equipment for the Tribal mental health center, at a cost of \$1,255,000. DSHS shall provide these funds upon its acceptance of facilities plans prepared by the Tribe to meet these needs. A final accounting of the costs and expenditures of each project shall be provided to DSHS by the Tribe.

2. Training Trust Fund

Tribal members will receive funds for training in alcoholism counseling, day care, child welfare, mental health and social service management. This will be accomplished by the Department through a fund of \$127,000. Training will be provided through the Department's programs, or through local educational programs.

VI. ECONOMIC DEVELOPMENT

A. Economic Development and Land Acquisition Fund

The Tribe will receive \$9,500,000 to develop Tribal lands, and to make future purchases of land.

These funds can be used to acquire lands and to develop business and commercial ventures which will provide income to the Tribe for the operations and programs of the Tribal government, as well as additional jobs for Tribal members.

B. Small Business Fund For Tribal Members

The Tribe will receive \$2 million to be used to support and assist in the development of business enterprises by Tribal members.

This fund could provide start-up funds and/or low interest loans to Tribal members to begin or expand their own businesses, wherever they may live.

C. Blair Navigation Project Participatory Payments

Tribal incentives in the form of long-term annual participatory payments to the Tribe for economic development will be

provided. Annual payments totalling \$2,500,000 over 20 years will be made to the Tribe for their participation in Blair Waterway East 11th Street Bridge Navigation Opening Project. Details of these participatory payment schedules are in Document 6, Blair Navigation Project.

VII. BLAIR NAVIGATION PROJECT

This project, which has been determined by the parties to be a common benefit to the United States, Tribe, non-Indian entities, and entire community, is included as an element of this Agreement. Federal legislation shall expressly recognize the Tribe's right to engage in foreign trade, consistent with federal law. It will widen and deepen the Blair Waterway navigation channel to meet both national and local domestic and foreign trade objectives. Incentives for the Tribe's participation in this important Water Resources Project are as follows:

A. Unlocking of the Tribe's Blair Waterway and Backup lands provided in this Agreement. As with all other land along the Blair Waterway, these lands will be able to be developed to their optimum with the aid of these navigation improvements.

B. Provision of \$2,500,000 in long-term annual participation payments to the Tribe. These payments will be available for short and long-term economic development purposes, such as their potential use on the Tribe's Blair Waterway properties.

A full project description, estimated costs, basis of funding within this Agreement, accomplishment plan, and Tribal incentive payments is found in Document 6.

VIII. FUTURE GOVERNMENTAL AUTHORITY, RESPONSIBILITY, AND COOPERATION

In the area of governmental jurisdiction and the exercise of police powers, certainty and stability are important to the Tribe, local governments, the business sector, and private citizens, in order to achieve sustained and rational economic growth in the future, certainty for landowners, and an acceptable method of governing the area.

The restricted and trust lands of the Puyallup Indian Tribe now lie primarily within Pierce County, the City of Tacoma, and the City of Fife. The county is the second most populated county in the state and the area is highly urbanized and intensively developed. This section is intended to resolve governmental

authority issues between the Tribe, United States of America, and State and local governments.

Because of the importance of these issues to both the Tribe and the other parties, these issues are extensively described below, and fully described in Document 7.

A. Governmental Jurisdiction and Authority

The Puyallup Indian Reservation has been historically defined in various ways; one of those is as "the land within the high water line as meandered, and the upland boundaries as shown on the Plat Map of the 1873 Survey conducted by the United States General Land Office and filed in 1874, referred to as 'the 1873 Survey Area' in this Agreement." The parties agree that this Agreement does not resolve their differences as to the current boundaries of the Puyallup Indian Reservation. For purposes of this Agreement, the parties will use this Survey Area; a map is shown on page 27 for illustrative purposes.

The 1873 Survey Area shall not be used as basis for asserting Tribal jurisdiction or governmental authority over non-Indians, except as specifically provided by this Agreement. The Federal definitions of "Indian country", "Indian lands", and/or "Indian reservation" shall not be used by the Tribe or the United States as a basis for asserting Tribal control over non-trust lands either inside or outside the 1873 Survey Area, or the activities conducted on those lands, except as provided by the Agreement, or as otherwise agreed to between the Tribe and State, and/or local governments.

"Trust land" or "land in trust status" means land or any interest in land the title to which is held in trust by the United States for an individual Indian or Tribe; "restricted land" or "land in restricted status" means land the title to which is held by an individual Indian or a Tribe and which can be alienated or encumbered by the owner only with the approval of the Secretary of the Interior, because of limitations contained in the conveyance instrument pursuant to federal law or because of a federal law directly imposing limitations. Wherever the term "trust land" is referred to in this Agreement, it shall be deemed to include both trust and restricted lands.

1. Tribal Jurisdiction and Governmental Authority - General

- a. The jurisdiction of the Puyallup Indian Tribe shall extend to existing and future restricted and trust lands. The extent of the Tribe's

jurisdiction shall be determined as provided in federal law.

b. Except as otherwise provided in this Agreement, the Tribe agrees not to assert or attempt to assert any type of jurisdiction and governmental authority, existing or potential, including but not limited to the power to tax, as to (a) non-trust lands; (b) any activity on non-trust lands; (c) any non-Indian individual or business, on non-trust lands.

c. The settlement lands, including the Outer Hylebos parcel conveyed to the Tribe by the Terminal-3 Agreement with the Port, shall have on-reservation status; forest, recreation and cultural lands shall have off-reservation status. The reservation status of other lands shall be as provided in federal law.

d. The parties agree that all claims of ownership and governmental jurisdiction by the Tribe over the Initial Reservation or Intended Reservation on the south side of Commencement Bay will be terminated and extinguished by this Agreement.

e. The Tribe retains its authority under the Indian Child Welfare Act.

f. Notwithstanding any other provision of this Agreement, application of criminal law, family law and the Tribe's authority over its members and other Indians remains unchanged.

g. The Tribe retains and nothing in this Agreement shall affect the Tribe's status as an Indian Tribal government for purposes of the Indian Governmental Tax Status Act, 26 U.S.C. §7871, et seq, including for purposes of issuing tax exempt bonds.

2. Tribal Jurisdiction and Governmental Authority - Fisheries

a. This Agreement does not limit the Tribe's authority to prevent negative impacts on the fishery through the federal courts or federal, State and local permitting procedures, subject to Section IV of the Agreement. However, the Tribe will not exercise jurisdiction and governmental

authority over non-trust lands and non-Indians on those lands for that purpose.

b. Nothing in this Agreement shall have any effect on the Tribe's or its members' water rights as related to fisheries protection or to lands owned by the Tribe or its members, hunting, gathering, or fishing rights based on aboriginal rights, treaty or executive order. These issues are not resolved by this Agreement, and this Agreement does not in any way affect the legal position of any party concerning these issues.

c. The fishery is an important cultural and economic resource to the Puyallup Indian Tribe. Therefore, the Tribe will adopt standards for trust lands which meet or exceed the highest standards of federal and state environmental protection. The Tribe will also confer with local governments to try to work out uniform standards for environmental protection.

3. Tribal Jurisdiction and Governmental Authority - Environmental

For the purposes of this Agreement, the federal, state and local governments have exclusive jurisdiction for the administration and implementation of federal, state and local environmental laws on non-trust lands within the 1873 Survey Area. The federal and Tribal government have exclusive jurisdiction for the administration and implementation of federal and Tribal environmental laws on trust lands within the 1873 Survey Area. Any federal delegation under the federal environmental laws within the 1873 Survey Area for non-trust lands will be solely to the State of Washington or its political subdivisions, and any federal delegation under the federal environmental laws within the 1873 Survey Area for trust lands will be solely to the Tribe. In carrying out such delegated authority, the State, local and Tribal governments agree to involve each other in a consultative manner and to work cooperatively where practicable.

Each party reserves the right to comment on any other party's application for delegation. If the State or the Tribe receives delegation of a federal environmental program, the parties agree to enter into discussions which will result in a complementary approach to environmental issues, with the overall objective of consistent or compatible environmental controls in the areas under respective State and Tribal jurisdictions.

Prior to the delegation to the Tribe or State of federal programs, or for those areas where there are no federal programs, the State and the Tribe agree to consult in such a manner as to provide consistent and cooperative environmental programs.

Subject to the limitations set forth above, and solely for the purpose of qualifying for federal contract and grant funding under federal environmental laws, the Tribe may utilize the 1873 Survey Area for program planning purposes. The Tribe's governmental status is not diminished by this Agreement, and the Tribe shall be deemed to qualify for the receipt of environmental program delegation and funding under federal environmental law subject only to the Tribe's ability to demonstrate its reasonable capability to administer an effective program on trust land in a manner consistent with applicable federal law.

Consistent with the terms of this Agreement it is the intent of the parties hereto to confirm the governmental authority of the Puyallup Tribe of Indians and to recognize the Tribe's continuing right to participate under the federal environmental programs, as provided for herein, and to receive grant assistance, develop cooperative agreements, and receive technical assistance from EPA or other federal agencies to the full extent of the law.

The terms of this Agreement or any cooperative agreement entered into hereunder shall not act to diminish the trust responsibility owed to the Tribe by the United States or preclude the Tribal government from participating in any federal environmental program consistent with applicable federal law.

The Tribe retains its rights and responsibilities to consult and otherwise participate in programs and regulatory activities of environmental agencies.

4. Jurisdiction and Governmental Authority - Other Governments

The state and its political subdivisions will retain and exercise all jurisdiction and governmental authority over all non-trust lands and the activities conducted thereon and as provided in federal law over non-Indians.

B. Future Trust Lands

For placing new land in trust, the parties, including the Secretary of Interior, shall abide by 25 CFR (Code of Federal Regulations) Part 151 -- Land Acquisitions, as all of those standards now exist or as they may be amended in the future.

Nothing in this Agreement shall limit or modify any party's right to appeal the decision of the Secretary.

The non-Indian parties agree to support applications to place land in trust for residential purposes filed by the Tribe or its members before July 1, 1988, if the land is within the 1873 Survey Area.

Any disputes regarding violations of conditions or agreements on lands placed in trust may be reviewed by the Federal Courts, pursuant to Section XI of this Agreement.

C. Future Consultation Between the Tribal Government and Local Governments

The Tribe and local governments need to communicate and coordinate on land use and related matters. This section provides a new mechanism to facilitate these necessary communications.

The parties agree that when the Tribe or any general purpose local government which is a party to this agreement receives an application for trust or a permit which is defined as a "substantial action" in Document 7, or itself proposes to take a "substantial action" concerning property located within the 1873 Survey Area, the issuing government agency will notify the other affected governments and give an opportunity for consultation and discussion. This consultation process applies to any land proposed for future trust status, or to a change in use on trust property. Each government retains the right to make the final decision on every such matter.

In the consultation process, the parties shall discuss the following factors as applicable:

- a. The need of the Tribe and its members for increased land;
- b. The objectives of federal Indian policy;
- c. The protection of established or planned residential areas from uses or developments which would adversely affect those areas;

- d. Avoidance of adverse effects on other current and planned development and uses, on adjacent lands and within surrounding neighborhoods;
- e. Protection of the health, safety, and welfare of the community;
- f. Preservation of open space;
- g. Protection of the physical environment from adverse impacts;
- h. Opportunity for economic growth and diversity;
- i. Provisions for providing public facilities;
- j. Concern that land may be put into trust for the primary purpose of allowing non-Indian businesses to avoid state and local taxation or where the Tribe receives no significant immediate benefits from the transaction; and
- k. The impact resulting from the removal of the land from state and local governments' tax rolls.

No predetermination of the applicable factors is contained in this Agreement, except that the non-Tribal parties agree to not raise objections to the trust applications for lands conveyed to the Tribe by this Agreement. When other land is proposed to be placed in trust, it shall be subject to the provisions of this section. Before the Tribe or a member of the Tribe files any trust land application in the future, or the Tribe authorizes a substantial change in use of land in trust, the Tribe will use the consultation process described in this Agreement.

The parties agree that the Federal District Court shall have jurisdiction in the event any party fails to follow this consultation procedure.

D. Governmental Services

The Tribe or Tribal members shall be responsible for the costs of all governmental services to the Tribe or Tribal members (whether provided by the Tribe or contracted for with the local governments) where those services are requested by the Tribe or Tribal members. The local governments have no duty to provide services to trust lands unless the Tribe or its members request such services, and there is a mutually satisfactory agreement regarding payment for such services.

The state and local governments shall be responsible for providing such services to non-trust lands. The Tribe may choose to provide governmental services to Indians on trust lands or may contract with another governmental unit for services it chooses not to provide to its members, unless such contracting would result in a significant disruption of service or the ability to deliver service by either contracting party. Residential services such as water, power, heat and other utilities for individual Tribal members will remain the responsibility of Tribal members unless the Tribe undertakes a housing program of the type provided by housing authorities, in which case the Tribe will be responsible. The provision of public facilities and services for trust lands will be covered by intergovernmental agreements.

E. Agreement for Fife

The Tribe and the City of Fife agree to a development fee for general governmental services and school district operational expenses as set forth herein.

a. If the total amount of trust land within the City of Fife exceeds 17% of the land area within the City of Fife, or exceeds in value an amount equal to 17% of the assessed valuation of all real property within the City of Fife, then, as to any additional lands placed into Trust, the Tribe shall compensate the City of Fife and the Fife School District in an amount and manner to be agreed to between the Tribe and the City of Fife.

b. The standard to be applied in determining the amount and manner of payment shall be that the City of Fife and the Fife School District shall receive in annual payments from the Tribe the amount of income the City and School District would have continued to receive for general governmental services and school district operations if the property would have remained in fee status (any federal impact monies received by the city or school district as a result of land achieving trust status or Indian students attending Fife School District schools shall be credited towards the above payments). The valuation of each property shall be based upon the actual use of the property, or its zoning classification, whichever yields the highest property value. For this purpose the zoning classification in the City of Fife zoning map shall be used until the Tribe adopts its own comprehensive zoning map, at which time the Tribe's zoning map shall be used for all subsequent years.

c. If the City and Tribe cannot agree upon the valuation of trust properties or upon the amount of payment,

then these issues shall be arbitrated. The parties will first attempt to reach agreement using a single arbitrator; if they cannot agree, they will use a three-member arbitration panel. The three-member panel shall be chosen as follows: the Tribe and City shall each choose one arbitrator, and those two arbitrators shall choose a third.

d. The decision of the arbitrators shall be binding on the parties and may be enforced in the United States District Court for the Western District of Washington.

e. The boundaries of Fife as of July 1, 1988 shall be used for purposes of determining the above percentages unless Fife and the Tribe agree otherwise. Section VIII.E. shall remain in full force and effect unless Fife is disestablished as a municipality; then and only then shall this agreement between Fife and the Tribe be terminated.

f. The City of Fife and the Tribe share a common goal to assure that the future development within the City of Fife will balance the need for commercial and industrial growth with the need for the preservation, enhancement and expansion of Indian and non-Indian residential areas and the protection and rebuilding of Wapato Creek as a viable fish run. The Tribe and the City of Fife will consult with and cooperate with each other in developing their respective land use plans in order to effectuate this goal.

F. Law Enforcement

In order to exercise the highest degree of cooperation, the Puyallup Indian Tribe and the state and its political subdivisions, through their respective law enforcement authorities, agree to the following program, as described in Document 7:

1. The Puyallup Tribal police will be primarily responsible for law enforcement over Tribal members on trust lands in the 1873 Survey Area. Local and state police agencies shall be primarily responsible for law enforcement over non-Tribal members and on non-trust lands, as presently provided by law.

2. Each jurisdiction is responsible for its own criminal investigations, pursuit of alleged criminals, and arrests, and for all liability or damage arising from incidents or actions involving its officers, whether or not the authority being exercised is that of

the employing jurisdiction or of other jurisdictions under deputization. The employing jurisdiction will hold harmless other jurisdictions whose authority is being exercised by the officer.

3. All parties agree to minimize jurisdictional disputes by formal and informal consultation on matters of mutual interest. Specific jurisdictional problems shall be the subject of continuing and regular consultations.

IX. RESOLUTION OF PUYALLUP TRIBAL LAND CLAIMS

A. In return for the land and other benefits derived from this Agreement, the Puyallup Indian Tribe and the United States government, as trustee for the Tribe and its members, agree to relinquish all claims to any land, present or former tidelands, submerged lands, mineral claims, non-fisheries water rights connected with such relinquished land, known or unknown, within the State of Washington, and all water claims associated with or arising from such claims, subject only to the following exceptions:

1. 12.5 acres of former riverbed land confirmed to the Tribe in Puyallup Tribe of Indians v. Port of Tacoma, U.S. District Court, Western District of Washington, Cause No. C80-164T. Provided that the Tribe agrees to provide an easement for crossing and property for bridge supports to the State or a political subdivision at just compensation, for the purpose of construction of a bypass road as specified in Document 6.

2. All land to which record title in the Tribe or the United States in trust for the Tribe or its members derives from a patent issued by the United States or from a conveyance of tideland by the State of Washington. Record title means title documented by identifiable conveyances reflected in those records imparting constructive notice of conveyances according to the laws of the State of Washington, RCW Chapters 65.04 and 65.08, and the final judgments of state or federal courts.

3. Certain land presently recognized to be owned by the Tribe or the United States in trust for the Tribe within The Indian Addition to the City of Tacoma as recorded in book 7 of plats at pages 30 and 31, records of Pierce County, Washington, as follows:

- a. Portions of Tracts 2, 5, 6, 10 and 11
- b. Tracts 7 (school site)
- c. Tract 8 (church site)
- d. Tract 9 (cemetery site)
- e. Approximately 38 lots in blocks 8150, 8249, 8350 and 8442, inclusive.

No later than December 1, 1988, the Tribe may expand this list of parcels, wherever located, provided, the Tribe provides the non-Indian parties with the legal description of any such parcel, and with evidence of ownership and/or trust status of such parcel(s) being vested in the Tribe or the United States in trust for

the Tribe by record title or by B.I.A. land records.

4. The lands transferred to the Tribe pursuant to this Agreement.

5. The rights to underlying lands or the reversionary interest of the Puyallup Tribe, if any, in the Union Pacific and/or Burlington Northern rights-of-way across the 1873 Survey Area, where the property over which they were granted belonged, at the time of the grant, to the United States in trust for the Tribe, or to the Tribe.

6. The presently submerged lands in the Puyallup River within the 1873 Survey Area below the mean high water line.

However, with regard to these above-mentioned six exceptions, the Tribe agrees not to infringe upon or impair current public uses or easements on such lands. The Tribe also agrees not to impair or infringe title to any existing railroad easements, permits, leases and licenses for communications or other utility facilities on such lands listed in the above-mentioned exceptions.

B. Subject to the explicit provisions of this Agreement, the terms "land claims" and "claims" as used in this section include rights and claims to minerals and other usual interests in land and claims related to alleged past trespass or damage. The Tribe waives any claim for trespass or damages against the parties to this Agreement as to claims which the Tribe is relinquishing in this Agreement.

C. Nothing in this section nor in this Agreement shall be construed to impair, eliminate, or in any way affect the title of any individual Indian to land held by him in fee or in trust, nor shall it affect the personal claim of any individual Indian as to claims regarding past sales of allotted lands or any claim which is pursued under any law of general applicability that protects non-Indians as well as Indians.

D. The Tribe and the federal government will confirm to Burlington Northern Railroad Company and its assigns ownership of the former riverbed land and any tidelands or harbor areas owned, occupied or used by Burlington Northern or its assigns in Commencement Bay. Further, the Tribe agrees not to revoke its consent to Burlington Northern, or any other railroad with lines or rights-of-way, for acts or omissions through the date of this Agreement. The Tribe will also grant a right-of-way to Burlington Northern for its existing line through the former riverbed land now in possession of

the Tribe. The Tribe and federal government will confirm to Burlington Northern Railroad Company and its assigns that all existing easements, permits, leases and licenses for communications or other utility facilities shall continue to exist with the same rights, duties and benefits.

The Tribe will not impose any tax or fee upon any Union Pacific Railroad or Burlington Northern Railroad property, right of way, or railroad traffic for a period of 30 years from the date of this Agreement. The Tribe further agrees, when the 30 years expire, to limit, in perpetuity, any such taxation or fees to a proportionate share of the taxes or fees which otherwise would be paid to the State of Washington, Pierce County or other taxing district based upon the State-determined value of railroad operating property within Pierce County. The State agrees to exempt such taxes or fees, to the extent the Tribe imposes such taxes or fees, which otherwise would be paid to the State of Washington, Pierce County, or other taxing district.

E. This Agreement shall be for the benefit of all public and private landowners whose land titles might or would otherwise be affected by the Tribal claims described above.

X. IMPLEMENTATION AND MODIFICATION

A. Structure of Agreement

This Agreement will consist of this document entitled "Agreement" and several separate documents contained in a technical appendix which will be an integral part of the Agreement:

1. Settlement lands
2. Payments to Members of Puyallup Tribe
3. Permanent Trust Fund for Tribal Members
4. Fisheries
5. Job Training & Placement Program; Social & Health Service Improvements
6. Blair Navigation Project
7. Future Governmental Authority, Responsibility and Cooperation

Upon ratification by the Puyallup Tribe of this Agreement, a Court Order, Congressional Act, and State of Washington legislation will be prepared.

B. Ratification By the Tribal Members

The Tribal members must ratify this Agreement by no later than August 27, 1988. Upon ratification, the parties shall

immediately convene to develop a plan for implementing the Agreement at the earliest possible date.

C. Federal and State Participation

1. In order to go into effect, this Agreement requires certain actions by the United States Congress as specified in this document, including contribution of approximately \$77,250,000. To implement this Agreement, the parties shall request that Congress enact legislation, provided that the language of such legislation shall not alter in any way the terms of this Agreement, except with the consent of the parties.

2. In order to go into effect, this Agreement requires certain actions by the Washington State Legislature as specified in this document, including contribution of approximately \$21,000,000. To implement this Agreement, the parties shall request that the Legislature enact legislation, provided that the language of such legislation shall not alter in any way the terms of this Agreement, except with the consent of the parties.

3. Among other provisions, these legislative acts will specify, and the parties agree, that (a) none of the funds, assets or income from the permanent trust fund received by the Tribe as part of this Agreement shall be subject to levy, execution, forfeiture, lien, encumbrance, or seizure; (b) nothing in the Agreement shall affect the eligibility of the Tribe or any of its members for any federal program or the trust responsibility of the United States and its agencies to the Tribe and Tribal members; (c) none of the funds, assets or income from the permanent trust fund thereof contained in or resulting from this Agreement shall at any time be used as a basis for denying or reducing funds to the Tribe or its members under any federal, state, or local program, provided the federal legislation implementing this Agreement authorizes such action by the state and local governments; and (d) none of the funds or assets transferred to the Tribe or its members by this Agreement shall be deemed to be taxable, nor shall such transfer be a taxable event.

D. Effective Date

This Agreement shall become effective when all of the following steps have been accomplished. It is contemplated that the steps will be fulfilled in the following order:

1. Approval of the Agreement by all of the parties, except the State of Washington and the United States;

2. Enactment of State legislation necessary to effectuate the Agreement (excluding actions specifically listed as having a period of time after the effective date for completion); concurrently with

3. Enactment of federal legislation necessary to effectuate the Agreement, including appropriation of funds and provisions for receiving property in trust (excluding actions specifically listed as having a period of time after the effective date for completion);

4. The conveyance of the Settlement lands to the United States in trust for the Tribe, and payment of all funds required by the Agreement to the Tribe (excluding actions specifically listed as having a period of time after the effective date for completion). This shall be completed within 30-days of the completion of Steps 2 and 3. If the conveyance of any Port lands are delayed solely because of contamination audits and/or cleanup actions required by this Agreement, their delayed conveyance will not constitute a reason for delay of the effective date of this Agreement.

5. Entry of an order of dismissal with prejudice in Puyallup Indian Tribe v. Union Pacific Railroad Company, et al, C84-359T. The motion for an order of dismissal shall be filed within thirty days of completion of Step 4.

E. Modification

The parties recognize that they may at various times in the future wish to modify this Agreement and provisions of Documents 1-7. After ratification of this Agreement by the Tribal members, the parties will develop procedures for modification of the documents.

This Agreement shall not preclude the Tribe and any other parties from agreeing to early implementation or action on provisions of this Agreement.

XI. FEDERAL COURT JURISDICTION

A. Liability

Remedies for violation of any provision of this Agreement shall be solely against the party or parties whose action or

inaction proximately caused the violation. There shall be no joint and several liability among the parties to this Agreement.

B. Consent to Sue

All parties to this Agreement consent to suit in the Federal District Court for the Western District of Washington, Southern Division, and agree that the Federal Court shall have jurisdiction over any disputes arising from this Agreement. All parties shall enter into a limited waiver of their sovereign immunity from suit, if any, to the extent that they consent to actions seeking to remedy violations of this Agreement or its implementing contracts, and for declaratory judgment actions regarding their provisions.

This waiver of sovereign immunity will be limited to the forms of relief which will be authorized by the Federal Court consent decree: 1) specific performance of the terms of the Agreement or, if the court determines that specific performance is not feasible, 2) a remedy specified by the court which will provide a benefit equivalent to that which was contemplated by the provision of the Agreement in question, or 3) consequential damages in the event a court finds that the party has knowingly and intentionally acted in a manner so as to frustrate the purposes of this Agreement, notwithstanding Section X.C.3.(a).

XII. LEGAL DISCLAIMER

This Agreement, its accompanying Documents 1-7, and all negotiations and exchanges of technical information leading to this Agreement constitute offers of settlement and compromise of disputed issues entered into between the parties expressly pursuant to Rule 408 of the Federal Rules of Evidence. Accordingly, in the event that the above conditions are not met and this Agreement does not become effective, all statements and agreements contained herein and in Documents 1-7, all technical reports exchanged by the parties, and all negotiations conducted by them are in strict confidence and will not be admissible or used in any way against any of the parties to this Agreement, or the beneficiaries of this Agreement, in any legal or administrative proceeding.